(19,612.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904

No. 512.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE RAILROAD COMPANY, AND THE EQUITABLE TRUST COMPANY OF NEW YORK, PETITIONERS,

vs.

NORTHERN SECURITIES COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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Transcript of Record.

United States Circuit Court of Appeals for the Third Circuit, October Term, 1904.

NORTHERN SECURITIES COMPANY, Defendant and Appellant,
vs.
EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON Short Line Railroad Company, and The Equitable Trust Company of New York.
No. —.

On Appeal from the Circuit Court of the United States for the District of New Jersey.

Filed September 22, 1904.

1 Circuit Court of the United States, District of New Jersey.
In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Complainants,
vs.
NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILWAY Company, Defendants.

Second Amended Bill.

(Filed June 4, 1904.)

To the honorable the judges of the circuit court of the United States for the district of New Jersey:

Edward H. Harriman and Winslow S. Pierce, residents and citizens of the State of New York; Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah and a resident and citizen of said State, and The Equitable Trust Company of New York, a corporation organized and existing under the laws of the State of New York and a resident and citizen of said State, bring this their second amended bill of complaint against the Northern Securities Company, a corporation organized and existing under the laws of the State of New Jersey, and a resident and citizen of said State and an inhabitant of the district of New Jersey, and the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin and a resident and citizen of said State.

And thereupon your orators complain and say:

I. Your orators Edward H. Harriman and Winslow S. Pierce are severally residents and citizens of the State of New York; your orator Oregon Short Line Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Utah as a railroad corporation, and a resident and citizen of said State; and your orator The Equitable Trust Company of New York is a corporation organized and existing under and by
2 virtue of the laws of the State of New York and a resident and citizen of said State.

II. The defendant Northern Securities Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and a resident and citizen of said State and an inhabitant of the district of New Jersey. The defendant Northern Pacific Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and a resident and citizen of said State, but is not an inhabitant or found within the district of New Jersey and is without the jurisdiction of this court.

III. Your orators are informed and verily believe and, therefore, aver that the total authorized capital stock of the Northern Pacific Railway Company in November, 1901, amounted to the par value of $155,000,000, consisting of $75,000,000 par value of preferred stock and $80,000,000 par value of common stock; that such proceedings were had in November and December, 1901, that said preferred stock was converted into common stock so as to make the entire issue of stock of said railway company consist of one class or common stock, and that such is the authorized amount of its capital stock at the present time, which has been issued and is now outstanding. The Great Northern Railway Company is a corporation created and existing by virtue of the laws of the State of Minnesota, and its authorized capital stock in November, 1901, was and still is about $125,000,000 par value, of which about $123,000,000 par value has been issued and was then and is now outstanding.

IV. Your orators further aver that said Great Northern Railway Company at all the times in this bill mentioned owned and operated and still owns and operates a system of railways extending from Superior, in the State of Wisconsin, and from Duluth and St. Paul, in the State of Minnesota, to Everett and Seattle, in the State of Washington, and to Portland, in the State of Oregon, with a branch line to Helena, in the State of Montana; that the defendant Northern Pacific Railway Company at all the times in this bill mentioned owned and operated and still owns and operates a system of railways extending from Ashland, in the State of Wisconsin, and from Duluth and St. Paul, in the State of Minnesota, through Helena, in the State of Montana, to Seattle and Tacoma, in the State of Washington, and Portland, in the State of Oregon; and that said systems of railway are substantially parallel and in a position to

compete with each other in the transportation of persons and
3 property among the several States and between said States and foreign countries and in the transaction of interstate and foreign commerce carried on by them.

V. The defendant Northern Securities Company was organized on or about the 13th day of November, 1901, by filing in the office of the secretary of state of New Jersey, as required by the statutes of said State in such case made and provided, a certificate of incorporation wherein and whereby it was, among other things, recited that said corporation was organized for the object of acquiring and holding shares of the capital stock of other corporations, that its authorized capital stock should be four hundred million dollars ($400,000,000) divided into four million shares of the par value of one hundred dollars ($100) each, and that its duration should be perpetual, as will more fully and at length appear by said certificate of incorporation so filed in the office of the secretary of state of New Jersey, of which a copy is hereto annexed as Exhibit A and made a part hereof.

Although incorporated and organized in form according to and nominally for objects authorized by the laws of the State of New Jersey, in reality said Northern Securities Company was incorporated and organized in pursuance of a combination in restraint of trade and commerce among the several States and for objects prohibited by the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and as an instrument and agency to affectuate and accomplish the objects of said combination, that is to say: prior to November 13, 1901, James J. Hill, J. Pierpont Morgan, William T. Clough, D. Willis James, John S. Kennedy, Robert Bacon, George F. Baker and Daniel S. Lamont, and their associates, owning or controlling a majority of the capital stock of the Great Northern Railway Company, and a majority of the common capital stock of the Northern Pacific Railway Company, agreed to organize a holding company under the laws of the State of New Jersey, and that said holding company should acquire and permanently hold a majority of the shares of the capital stock of said Great Northern and Northern Pacific Companies and control the operation and management thereof in perpetuity, and that the then existing holders of such railway shares should deposit the same with said holding company and receive in lieu thereof share certificates of the said holding company upon the basis of $180 par value of its stock for each share of Great Northern stock and $115 par value of its stock for each share of Northern Pacific stock, and that said holding company should act as custodian, depositary, or trustee of said railway shares on behalf of the existing stockholders of said railway companies and their assigns.

4 Thereupon, in pursuance of said agreement said Northern Securities Company was organized under the laws of the State of New Jersey in manner aforesaid, and forthwith agreed to

acquire and hold the shares of said railway stocks, as aforesaid, as custodian, depositary, or trustee, and to issue in exchange therefor its own share certificates upon said agreed basis.

VI. Your orators are informed and verily believe and, therefore, aver that in pursuance of said agreement and prior to the 9th day of April, 1903, about $176,822,900 par value of the stock of said Northern Securities Company was issued by it in exchange for about $153,759,400 par value of the stock of said Northern Pacific Railway Company, and about $211,057,600 par value of the stock of said Northern Securities Company was issued by it in exchange for about $118,124,200 par value of the stock of said Great Northern Railway Company, and about $7,522,000 was issued for cash used for the purchase of other property and for corporate purposes, that said Securities Company caused the certificates for said railway shares to be transferred into and registered in its own name or the names of its agents and ever since has held and now holds the same so registered, and that such issue of Northern Securities stock for said stock of the Northern Pacific and Great Northern Railway Companies was to the then existing holders of stock in said railway companies and in exchange for certificates for said railway stocks, and for the purpose and with the intention of effectuating the scheme or combination above alleged, and to enable the Northern Securities Company, as such holding corporation, to hold a majority of the shares of the said railway companies and control the operation and management of the same.

Your orators are informed and verily believe, and, therefore, aver that all and singular the persons to whom the stock of said Northern Securities Company was issued, whether for shares of either of said railway companies or for cash, had full knowledge and information of the purposes for which said Northern Securities Company was organized and of the fact that a majority of the capital stock of each of said railway companies was to be or had been deposited with said Securities Company as custodian or depositary in pursuance of said agreement.

VII. Your orators further show that prior to the incorporation of said Northern Securities Company your orator Oregon Short Line Railroad Company, had acquired and at the time of the incorporation and organization of said Securities Company owned
5 $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock of the defendant Northern Pacific Railway Company represented by certificates issued to and registered in the name of your orators Harriman and Pierce; and that after the incorporation of the said Northern Securities Company had been resolved upon as aforesaid, your orators Harriman, Pierce and Oregon Short Line Railroad Company agreed with the promoters and incorporators of said Northern Securities Company to transfer to and deposit with said Northern Securities Company, under the terms and conditions aforesaid, the said shares of said Northern Pacific Railway Company of the aggregate par value of

$78,108,000 owned by said Oregon Short Line Railroad Company as aforesaid, and to receive in exchange therefor certificates of said Northern Securities Company representing an interest therein of $82,491,871 par value and $8,915,629 in cash, and in pursuance of said agreement your orators Harriman and Pierce, acting for your orator Oregon Short Line Railroad Company, did, on or about the 18th day of November, 1901, transfer and deliver to said Northern Securities Company certificates for $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock of said Northern Pacific Railway Company owned by your said orator as aforesaid and received in exchange therefor certificates of said Northern Securities Company representing an interest in $82,491,871 par value and said cash, and said Harriman and Pierce are now and ever since said 18th day of November, 1901, have been the registered owners and holders of said $82,491,871 par value of the shares of said defendant Northern Securities Company and such holding of stock by them is and at all times has been as trustees for the use and benefit of your orator Oregon Short Line Railroad Company, which is the beneficial owner thereof. Said $82,491,871 par value of the stock of said defendant Northern Securities Company, standing in the names of your orators Harriman and Pierce, trustees as aforesaid, was part of the original issue of the stock of the said Northern Securities Company.

Your said orators further show that the exchange aforesaid was made by your said orators in good faith in the belief that the organization of said Securities Company was not and the acquisition and holding by it of said railway stocks, as aforesaid, would not be in violation of any statute of the United States, and that it was under such belief that these complainants refrained, pending the final determination of the suit brought by the United States, as hereinafter alleged, from taking any steps or instituting any proceedings for the protection of their rights in the premises.

6 VIII. Your orators further show that heretofore and by indenture dated July 17, 1902, said Oregon Short Line Railroad Company duly pledged $82,491,000 par value of said stock of said defendant Northern Securities Company with your orator The Equitable Trust Company of New York, as trustee for an issue of bonds of said Oregon Short Line Railroad Company, of which bonds $82,491,000 face value have been certified and issued and are now outstanding, as will more fully and at length appear by said indenture, a copy of which is hereto annexed as Exhibit B and made a part hereof. The said stock of the Securities Company so issued to said Harriman and Pierce on November 18, 1901, is still registered in their names and the certificates therefor duly endorsed are now actually in the custody of your orator, The Equitable Trust Company of New York, as pledgee as aforesaid, and are available for tender, return or restoration as hereinafter alleged.

IX. Your orators further aver that at the time of such exchange, on said 18th of November, 1901, it was agreed between said Harri-

man and Pierce and said defendant Northern Securities Company that the said $41,085,000 par value of said preferred stock of the said Northern Pacific Railway Company should be converted into common stock of said Northern Pacific Railway Company; that said preferred stock was subsequently and in or about the month of December, 1901, converted by said defendant Northern Securities Company into common stock of said Northern Pacific Railway Company of the same par value; that certificates for $34,709,062 par value of such common stock registered in its name on the books of said railway company were substituted in lieu and place of the certificates for said preferred stock; that said Northern Securities Company caused said original common stock to be transferred into its name upon the books of said railway company, and that said Northern Securities Company now holds within the jurisdiction of this court certificates registered in its name on the books of the Northern Pacific Company for said common stock so originally received from your orators Harriman and Pierce and for said common stock into which said preferred stock was so converted and certificates substituted as aforesaid.

X. Your orators further aver that after the organization of said Northern Securities Company, and on or about the 10th day of March, 1902, the Attorney-General of the United States, under and by virtue of the provisions of the said act of Congress of July 2, 1890, commonly known as the anti-trust act, and
7 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," filed in the circuit court of the United States for the district of Minnesota, third division, a petition or bill of complaint in the name and on behalf of The United States of America against the defendant above named, Northern Securities Company, and against The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel Lamont, as defendants in said suit, in and by which bill of complaint it was, among other things, alleged that the defendants in said suit had entered into an unlawful combination or conspiracy in violation of the provisions of said anti-trust act, in organizing the Northern Securities Company in pursuance of the combination and for the purposes aforesaid, and praying that such combination be adjudged and decreed unlawful, and that it be adjudged and decreed that the defendant Northern Securities Company had acquired all and singular the shares of stock of the Northern Pacific and the Great Northern Railway Companies held or acquired by it in pursuance of an unlawful combination or conspiracy; that the Northern Securities Company, its stockholders, officers, directors, agents and servants, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting, or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific or the Great Northern Railway Company; that a mandatory

injunction issue requiring the Northern Securities Company to recall and cancel any certificates of stock issued by it in purchase of or in exchange for any of the shares of the capital stock of either of said railway companies, rendering in return therefor to the holders thereof the certificates of stock in the respective railway companies in lieu of which they were issued; that the Northern Pacific Railway Company be perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock; that the defendant Great Northern Railway Company be likewise perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock; that the individual defendants above named be perpetually enjoined from in any manner holding, voting or acting as the owner of any of the stock of the Northern Securities Company issued
8 in exchange for stock of either of the said railway companies, unless authorized by said circuit court of the United States, and that a mandatory injunction issue requiring each of the said defendants to surrender any stock of the Northern Securities Company so acquired and held by them and accept therefor the stock of the defendant railway company in exchange for which the same was issued. That thereafter, such proceedings were had in said suit that the various defendants therein duly answered, and issue was joined by the filing of replications on behalf of the United States to the separate and several answers of said defendants. All of which will more fully and at large appear by the record in said suit remaining on file in the office of the clerk of said circuit court of the United States for the district of Minnesota, third division, a transcript or copy of which is hereto annexed as Exhibit C and made a part hereof.

XI. Your orators further show that such proceedings were had in said suit in the circuit court of the United States for the district of Minnesota that thereafter, on or about the 9th day of April, 1903, a final decree was entered in favor of the complainant United States of America and against the defendants in said suit, in and by which decree it was, among other things, adjudged and decreed that said defendants in said suit had entered into a combination or conspiracy in restraint of trade such as the said anti-trust act denounced as illegal, that all of the stock of the Northern Pacific Railway Company and all of the stock of the Great Northern Railway Company then claimed to be held and owned by the defendant Northern Securities Company was acquired and was then held by it in virtue of such unlawful combination or conspiracy, that the Northern Securities Company, its officers, servants, agents and employees, should be and they were enjoined from acquiring or attempting to acquire further stock of either of the aforesaid railway companies, that the Northern Securities Company should be and it was enjoined from voting the aforesaid stock or from voting at any

meeting of the stockholders of either of the aforesaid railroad companies or from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railroad companies, or either of them, by virtue of its holding of such stocks therein, that the said railway companies, their officers, directors, servants and agents be and they were enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company or in its behalf at any corporate election, or from paying any dividends to the Northern Securities Company on account of stock of either of the aforesaid railway companies
9 which it then claimed to own and hold, and that the railway companies be and they were enjoined from permitting or suffering the Northern Securities Company or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies. Said decree further contained a provision that nothing therein contained should be construed as prohibiting the Northern Securities Company from returning or transferring to the stockholders of the Northern Pacific and the Great Northern Railway Companies, respectively, all or any of the shares of stock in either of said railway companies which said Northern Securities Company had theretofore received from said stockholders in exchange for its own stock, and that nothing therein contained should be construed as prohibiting the Northern Securities Company from making transfers and assignments of the stock aforesaid to such person or persons as might then be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies; all of which will more fully and at length appear by reference to the decree of said circuit court of the United States for the district of Minnesota, third division, dated on said April 9, 1903, a copy of which is hereto annexed as Exhibit D and made a part hereof. Your orators further show that they were represented in said suit by the Northern Securities Company and Northern Pacific Company as well as by the individual defendants Morgan, Bacon, Baker and Lamont, who were named as the representatives of original holders and owners of the Northern Pacific Company's stock acquired and held by said Northern Securities Company.

XII. Your orators further show that the defendants in said cause thereupon appealed to the Supreme Court of the United States from said decree and that such proceedings were had upon said appeal that thereafter and on or about the 14th day of March, 1904, a decision was entered in said Supreme Court, affirming said decree of said circuit court of the United States for the district of Minnesota, and that thereafter and on or about the 15th day of April, 1904, the mandate of the Supreme Court of the United States was duly issued and on or about the 19th day of April, 1904, was duly filed in the office of the clerk of said circuit court of the United

States for the district of Minnesota, which said mandate affirmed said decree of the 9th day of April, 1903.

XIII. Your orators are advised by counsel and, therefore,
10 aver that the effect of said decree of April 9, 1903, as affirmed by the Supreme Court of the United States, was to adjudge that the Northern Securities Company was not a purchaser or owner but simply a custodian of the shares of stock of said railway companies acquired and held by it as aforesaid, that it acquired and held possession thereof in violation of said anti-trust act, that it acquired no title thereto and cannot transfer any rights in respect thereof, and that the legal and equitable owners of said shares of the stock of said railway companies were and are the several parties who originally exchanged the same for stock of the Northern Securities Company or their assigns.

XIV. Your orators further show that immediately upon the rendition of such decision by the Supreme Court of the United States, the defendant Northern Securities Company, by action of its board of directors, determined to fully and unreservedly abandon and terminate said combination and its holding of said railway stock and to that end to reduce the capital stock of the company by ninety-nine per cent. thereof or to $3,954,000 par value, and to distribute and divide the stock of each of said Great Northern and Northern Pacific Railway Companies held by it *pro rata* among the stockholders of said Northern Securities Company, but not to return and retransfer to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, or their assigns, any of the shares of stock in either of said railway companies which said Northern Securities Company originally received from such stockholders in exchange for its own stock.

Thereupon and in order to consummate said purposes, as your orators are informed and verily believe and, therefore, aver, the board of directors of the Northern Securities Company on or about March 22, 1904, adopted certain preambles and resolutions in the words and figures following:

Whereas, in the course of its business, this company has acquired, and now holds 1,537,594 shares in the capital stock of the Northern Pacific Railway Company; and 1,181,242 shares in the capital stock of the Great Northern Railway Company; and

Whereas, in a suit brought by the United States against this company, the said railway companies and others, this company has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been
11 enjoined from paying to this company any dividends upon any of the shares of such railway company, held by this company; and

Whereas, this company has issued, and there are now outstanding 3,954,000 shares of its own capital stock; and

Whereas, this company desires and intends to comply with the decree in the said suit, fully and unreservedly, and without delay;

Resolved, In consideration of the premises, it is declared necessary and desirable for this company so to reduce its present stock as will enable it, without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railroad companies held by it.

Resolved, That the board of directors of this company hereby declares it advisable that article (4th) of this company's certificate of incorporation be amended, so as to read as follows:

Fourth. The capital stock of this company is hereby reduced to three million nine hundred fifty-four thousand dollars ($3,954,000), and shall hereafter be three million nine hundred and fifty-four thousand dollars ($3,954,000), divided into thirty-nine thousand five hundred forty (39,540) shares of one hundred dollars ($100) each. Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this company's stock surrendering to the company, for retirement, ninety-nine (99) per centum of the shares held by him.

Upon the surrender to this company, by any shareholder, of the entire number of shares, and parts of shares, of this company's stock, which he is hereby required to surrender, this company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof for fractional shares of the stock of this company.

The board of directors or executive committee from time to time shall make such rules and regulations as it shall deem nec-
12 essary or convenient for carrying out the provisions hereof, and all matters pertaining to the surrender and retirement of the stock of this company, or to the assignment and transfer of the stocks of the said railway companies, hereby contemplated, shall be under the direction of the board. For the purposes hereof, the stockholders of this company, and the number of shares held by them, respectively, shall be determined from the stock transfer books of the company, which, for such determination, shall be closed at a day and hour to be determined by resolution of the board.

Resolved, That a meeting of the stockholders of this company, for the purpose of taking action upon the said alteration of the certificate of incorporation of this company, and also upon such other business as may come before the meeting, be, and is hereby called, to be held at the general offices of this company in the city of Hoboken, county of Hudson, and State of New Jersey, at 11 o'clock a. m., on April 21, A. D. 1904.

Your orators further show that thereupon a circular or notice was directed to be issued and immediately was issued by and on behalf of the defendant, Northern Securities Company, addressed to its stockholders, notifying them of a special meeting of stock-

holders for the purpose of voting upon the propositions submitted by the directors as in said preambles and resolutions stated, and that such meeting was held on the 21st day of April, 1904. A copy of the notice or circular so issued by the defendant Northern Securities Company is hereto annexed as Exhibit E and made a part hereof.

Your orators further show that at such meeting of stockholders the stock of said Northern Securities Company was reduced ninety-nine per cent. by the vote of more than seventy per cent. in interest of its stockholders, and that by a like vote said plan of *pro rata* distribution was assented to, but that your orators then and there duly protested that said plan of distribution was illegal and in violation of the rights of your orators.

And your orators aver and show that the said plan of distribution is unauthorized by law, illegal and *ultra vires* the Northern Securities Company and in violation of the rights and equities of your orators, and in violation of the laws of the United States and of the State of New Jersey, and that the same has never been assented to by your orators and is not binding upon them.

XV. As your orators are informed and verily believe and, therefore, aver, the books of account and stock ledgers kept by
13 the defendant Northern Securities Company and the records of its transfer agent and registrar of transfer show for what purpose or consideration each outstanding certificate of stock was originally issued, whether for cash or for stock of said Northern Pacific or said Great Northern Railway Company, and will show that a large part of the stock of the Northern Securities Company, issued originally in exchange for stock of said railway companies, is now held in the name or on behalf of the original holders who exchanged the same for stock of said railway companies, and that, wherever there have been transfers of certificates to third parties, the origin of each and every outstanding certificate of stock of the said Northern Securities Company so transferred to third parties can be traced and shown in and by said records and books so that the assigns of the original holders of stock of the defendant Northern Securities Company can be identified and the stock of either railway company originally exchanged by their assignors can be delivered to said assigns in exchange for their present holdings of stock of the defendant Northern Securities Company.

XVI. Your orators further show that the defendant Northern Securities Company threatens and intends immediately to distribute the shares of stock of each of said Great Northern and Northern Pacific Railway Companies *pro rata* among its stockholders in disregard of the rights of your orators, and that if said defendant Northern Securities Company be not enjoined from so doing by this court, such distribution will be forthwith made, and the stock of the Northern Pacific Railway Company belonging to your orators, and to which they are entitled, will be lost to your orators, and they will thereby suffer injury, which cannot be compensated in damages, in that the

shares of the Northern Pacific Railway Company to which your orators are so entitled are registered on the books of said Northern Pacific Railway Company in the name of said Securities Company, and that said railway shares or any like amount of shares could not be purchased in any market or from any persons whomsoever.

XVII. Your orators further show that the proposed distribution *pro rata* in place of the return and restitution of the stock of said railway companies would represent a very large loss of annual income to your orators, amounting to over one million dollars, that is to say, the dividends at the rate now being paid upon the stock of the Northern Pacific Railway Company to which your orators are entitled would exceed by the sum of over one million dollars per annum the dividends upon the stock of the Great Northern and Northern Pacific Railway Companies which they would receive upon such *pro rata* division, and that the value of the Northern Pacific Railway stock to which your orators are entitled now exceeds and at all times mentioned in this bill exceeded by the sum or value of over ten million dollars the aggregate value of the *pro rata* share of the holdings of each of the said railway companies which your orators would receive on any such proposed *pro rata* distribution, which latter would be as follows: viz., $32,070,612 par value of Northern Pacific stock and $24,638,919 par value of Great Northern stock instead of $78,108,000 par value of Northern Pacific stock.

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XVIII. Your orators further show and aver that they are ready, able and willing, and they hereby offer to return and deliver, or cause to be returned and delivered, and they hereby tender to the said Northern Securities Company all and singular the certificates for the shares of its capital stock so received by them as aforesaid, and such part of said sum of $8,915,629 in cash so paid to them by or on behalf of the said Northern Securities Company as may be just, or such further or other sum as the court shall fix, in exchange for and upon the return of the common stock of the Northern Pacific Railway Company, so delivered and exchanged by them as aforesaid, and the common stock of said railway company into which the preferred stock so exchanged was converted as aforesaid, and they hereby offer to bring into court said stock of the defendant Northern Securities Company and said moneys whenever the court shall direct and in all respects to do and perform equity and right in the premises.

XIX. Your orators further show that after the restoration and return to the original depositors or their assigns of all and singular the shares of stock of said railway companies so acquired and held by the defendant, Northern Securities Company, under and by virtue of said illegal combination, there will remain in the treasury of said defendant more than sufficient assets and funds with which to pay and redeem any and all of the $7,522,000 par value of stock of the defendant issued as aforesaid for cash, or to fully compensate any such holders if compensation be adjudged.

In consideration whereof and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law and are only relievable in a court of equity where matters of this kind are cognizable, your orators pray the aid of this honor-
15 able court to the end that it be decreed that said proposed plan of distribution is illegal and contrary to law and in violation of the rights and equities of your orators, and that the complainants are entitled to the return and transfer to them by the defendant Northern Securities Company of the shares of common stock of said Northern Pacific Railway Company which were so delivered by said Harriman and Pierce and the shares of common stock into which the preferred stock of the Northern Pacific Railway Company delivered by them were converted, in exchange for the certificates of stock of the Northern Securities Company so issued to and now held by your orators and such sum in cash as may be just; and that the said defendant Northern Securities Company, its directors, officers and agents, may be ordered and directed to endorse the certificates now held by it for said stock of the Northern Pacific Railway Company to your said orator Oregon Short Line Railroad Company or in blank, and deliver the same to your orator The Equitable Trust Company of New York in exchange for the stock of the Northern Securities Company now held by it to be held subject to its rights and lien as trustee aforesaid; and that the defendant Northern Securities Company, its directors, officers, agents and employees be perpetually enjoined and restrained from in any manner parting with, disposing of, transferring, assigning or distributing any part of said stock of the Northern Pacific Railway Company so received from your orators Harriman and Pierce as aforesaid, or any common stock into which the preferred stock received from them may have been converted, or the certificates now representing the same or any part thereof, except to return the same to your orators in exchange for its own stock so issued as aforesaid and said cash; and that your orators have such other or further or general relief against said Northern Securities Company as shall be proper and just under the circumstances of the case.

Your orators further pray that the defendant Northern Securities Company may be enjoined and restrained from parting with, disposing of, transferring, assigning or distributing said stock of the Northern Pacific Railway Company or any part thereof during the pendency of this suit or any certificates now representing the same.

Your orators further pray that it may please your honors to grant unto your orators a writ of subpœna of the United States of America issued out of and under the seal of this honorable court, to be directed to said defendant, Northern Securities Company, therein and
16 thereby commanding it on a day certain to be named, and under a certain penalty, to be and appear before this honorable court, and then and there to answer all and singular the premises, under its corporate seal, but not under oath which is expressly waived, and to stand to, perfo rm and abide by such further order

direction and decree therein as may be made against it in the premises.

And your orators further pray a like writ of subpœna to be directed to the defendant Northern Pacific Railway Company therein and thereby commanding it on a day certain to be named, to appear and answer at its option.

And your orators as in duty bound will ever pray, &c.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel with Complainants.

JOHN F. DILLON,
R. V. LINDABURY,
WILLIAM D. GUTHRIE,
R. S. LOVETT,
BAINBRIDGE COLBY,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
State, County, and City of New York, } ss:

William D. Cornish, of full age, being duly sworn, on his oath says: I am vice-president of The Oregon Short Line Railroad Company, one of the complainants in the foregoing second amended bill of complaint named. I have read the said second amended bill and am familiar with the contents thereof, and the matters and things therein set forth so far as they relate to the acts and deeds of said Oregon Short Line Railroad Company are true, and so far as they relate to the acts and deeds of others, I believe them to be true.

WM. D. CORNISH.

Subscribed and sworn to before me this 3d day of June, 1904.

[L. S.] J. B. MAXWELL,
Notary Public, No. 51, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York,
State, County, and City of New York, } ss:

Winslow S. Pierce, of full age, being duly sworn, on his oath says: I am one of the complainants in the foregoing second
17 amended bill of complaint named. I have read the said second amended bill and am familiar with the contents thereof, and the matters and things therein set forth so far as they relate to my own acts and deeds are true, and so far as they relate to the acts and deeds of others, I believe them to be true.

WINSLOW S. PIERCE.

Subscribed and sworn to before me this 3d day of June, 1904.

[L. S.] J. B. MAXWELL,
Notary Public, No. 51, N. Y. Co.

18 EXHIBIT A TO BILL OF COMPLAINT.

Certificate of Incorporation of Northern Securities Company.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the act of the legislature of the State of New Jersey, entitled "An act concerning corporations (revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First. The name of the corporation is Northern Securities Company.

Second. The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the city of Hoboken, county of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Company. Such office is to be the registered office of the corporation.

Third. The objects for which the corporation is formed are:

(1.) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey or of any other State, Territory or country.

(2.) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of owne-ship.

(3.) To pu-chase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4.) To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebted-
19 ness or stock are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness of stock.

(5.) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other

States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

Fourth. The total authorized capital stock of the corporation is four hundred million dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth. The names and post-office addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

Name and post-office address.	Number of shares.
George F. Baker, Jr., 258 Madison avenue, New York, New York	100
Abram M. Hyatt, 214 Allen avenue, Allenhurst, New Jersey	100
Richard Trimble, 53 East 25th street, New York, New York	100

Sixth. The duration of the corporation shall be perpetual.

Seventh. The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose term shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the act of the legislature of the State of New Jersey passed March 22, 1901, amending the 17th section of the act concerning corporations (revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employé of the corporation may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws, or by vote of the board of directors.

21 The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors may appoint one or more vice-presidents, one or more assistant treasurers and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The board of directors shall have power from time to time to fix and determine and to vary the amount of the working capital of the corporation; to determine whether any, and, if any, what part of any, accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

The board of directors from time to time shall determine whether and to what extent, and at what time and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the board of directors, or by a resolution of the stockholders.

The board of directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting,
22 provided notice of such proposed alteration or repeal be included in the notice of the meeting.

In witness whereof, we have hereunto set our hands and seals, the twelfth day of November, 1901.

GEO. F. BAKER, JR. [L. S.]
ABRAM M. HYATT. [L. S.]
RICHARD TRIMBLE. [L. S.]

Signed, sealed and delivered in the presence of
GEO. HOLMES.

STATE OF NEW YORK, }
County of New York, Manhattan, } *ss:*

Be it remembered that on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Baker, Junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and I having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

23 & 24 EXHIBIT B TO BILL OF COMPLAINT.

Oregon Short Line Four per Cent. and Participating Twenty-five Year Gold Bonds.

Oregon Short Line Railroad Company, with the Equitable Trust Company of New York, Trustee.

Trust Indenture.

Dated July 17, 1902.

Principal Due August 1, 1927.

Interest Payable February 1 and August 1.

25 Oregon Short Line Railroad Company.

Trust Indenture.

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31 This trust indenture, dated the seventeenth day of July, in the year one thousand nine hundred and two, by and between the Oregon Short Line Railroad Company, a corporation duly organized and existing under the laws of the State of Utah (hereinafter called the "railroad company"), party of the first part, and the Equitable Trust Company of New York, a corporation duly organized and existing under the laws of the State of New York, as trustee (hereinafter called the "trustee"), party of the second part.

Incorporation of railroad company.

Whereas the party of the first part was duly incorporated under the laws of the State of Utah and has acquired certain shares of the par value

Ownership of stock of Securities Company.

of one hundred dollars each of the common capital stock of the Northern Securities Company, (hereinafter called the "Securities Company"), and may acquire additional shares of such capital stock, and desires to borrow money for its corporate purposes, and to that end has, by its board

Resolution to issue bonds.

of directors, resolved to issue its bonds to be called "Oregon Short Line four per cent. and participating twenty-five year gold bonds," each to be for one thousand dollars, or for a multiple thereof in the case of registered bonds; such bonds to be payable in the city of New York, on the first day of August, in the year one thousand nine hundred and twenty-seven, and to bear interest from August 1, 1902, at the rate of four per cent. per annum, payable semi-annually on the first days of February and August in each year, and to be entitled for every calendar year beginning with the year 1903 to receive in addition to said

32 interest an amount equal to any dividends and interest in excess of four per cent. upon the amount of said bonds, which may be paid in cash during such year upon the collateral on deposit with the trustee hereunder as security for the payment of said bonds as hereinafter provided;

Resolution to execute trust indenture.

And whereas, the board of directors of the railroad company has duly determined and resolved that the railroad company shall secure the payment of the principal and interest of said bonds and of said dividend payments by executing this trust indenture and by pledging and depositing

with the Equitable Trust Company of New York, as trustee, subject to the trusts and conditions thereof ten (10) shares of the capital stock of the Securities Company for every one thousand dollars par value of said bonds issued hereunder; Resolution to secure loan by pledge of stock of Securities Company.

And whereas, this trust indenture was submitted to said board of directors, and it was duly resolved that the same be executed by the president or vice-president of the railroad company in its name and on its behalf, that the corporate seal of the railroad company be thereto affixed and attested by its secretary or an assistant secretary, and that this trust indenture be acknowledged and delivered on behalf of the railroad company to the trustee herein named; Resolution to acknowledge and deliver trust indenture.

And whereas, the board of directors of the railroad company has duly approved the forms of coupon bond, registered bond, coupons and trustee's certificate substantially of the tenor and purport following: Resolution to approve form of bonds, etc.

33 (Form of Coupon Bond.)

No. —. $1,000. Form of coupon bond.

UNITED STATES OF AMERICA.

Oregon Short Line Railroad Company.

Four Per Cent. and Participating Twenty-five Year Gold Bond.

Due August 1, 1927.

The Oregon Short Line Railroad Company (hereinafter called the "railroad company"), for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder of this bond, one thousand dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the first day of August in the year 1927, at the city of New York, and to pay interest thereon from August 1, 1902, at the rate of four per cent. per annum, payable in said city in like gold coin, semi-annually on the first days of February and August in each year, upon presentation and surrender, as they severally mature, of the interest coupons

hereto annexed, and also on February 1, 1904, and on the first day of February of each subsequent year, upon like presentation and surrender of the February coupons, a *pro rata* share of any amount by which the dividends and interest which shall have been paid in cash during the preceding calendar year upon the collateral on deposit with the trustee, as security for the payment of the issue of bonds of which this is one, shall exceed four per cent. upon the amount of such bonds outstanding.

Both the principal of this bond and said interest and dividend payments are payable without deduction for any tax or taxes which the railroad company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any State, county or municipality therein.

34 This bond is one of a series of coupon bonds and registered bonds of the railroad company, known as the "Oregon Short Line four per cent. and participating twenty-five year gold bonds," issued and to be issued under a trust indenture dated July 17, 1902, executed by the railroad company to the Equitable Trust Company of New York, as trustee, and equally secured by the deposit and pledge with said trustee, subject to said trust indenture, of common stock of the Northern Securities Company, the aggregate amount of such bonds not to exceed the par value of such stock of the Northern Securities Company deposited and to be deposited with said trustee. Reference is hereby made to said trust indenture for a statement of the nature and extent of the security, the rights of the holders of bonds under the same, and the terms and conditions upon which the bonds are issued and secured. All or any of said bonds may be redeemed at a premium of two and one-half per cent. of their face value and accrued interest and dividend payments as provided in said trust indenture, on any first day of February or August upon three calendar months' previous notice.

This bond shall pass by delivery unless registered in the name of the owner on the books of the railroad company, such registry being noted on the bond by the railroad company. After such registry no transfer shall be valid unless made on said books by the registered holder in person or

by his attorney duly authorized, and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer, and thereupon transferability by delivery shall be restored: but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery. This bond may also at any time be surrendered, with all unmatured coupons thereto appertaining, in exchange for a registered bond without coupons, as provided in said trust indenture.

35 This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the trustee hereon endorsed.

In witness whereof, the Oregon Short Line Railroad Company has caused these presents to be signed by its president or its vice-president, and its corporate seal to be hereunto affixed and to be attested by its secretary or an assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto, as of the first day of August, 1902.

OREGON SHORT LINE RAILROAD COMPANY,
By —— ——, President.

Attest:
—— ——, Secretary.

[Form of Coupon for August of Each Year and February, 1903.]

Form of coupon fo August of each year and February, 1903.

No. —. $20.

On the first day of ——, 19—, Oregon Short Line Railroad Company will pay to bearer, at the city of New York, twenty dollars ($20), United States gold coin, being six months' interest then due on its four per cent. and participating twenty-five year gold bond No. —.

—— ——, Treasurer.

Form of February coupon for 1904 and subsequent years.

[Form of February Coupon for 1904 and Subsequent Years.]

No. —.

On the first day of February, 19—, Oregon Short Line Railroad Company will pay to bearer at the city of New York, twenty dollars
36 ($20) United States gold coin, being six months' interest then due on its four per cent. and participating twenty-five year gold bond numbered as stated below, and also any dividend payment in addition to said interest which may be payable on said bond on said date. No. of bond —.

—— ——, Treasurer.

[Form of Registered Bond.]

Form of registered bond.

No. —. $—.

UNITED STATES OF AMERICA.

Oregon Short Line Railroad Company.

Registered Four Per Cent. and Participating Twenty-five Year Gold Bond.

Due August 1, 1927.

The Oregon Short Line Railroad Company (hereinafter called the "railroad company"), for value received, hereby promises to pay to —— —— or assigns, —— thousand dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the first day of August in the year 1927, at the city of New York, and to pay interest thereon from the first day of February or August, as the case may be, next preceding the date of this bond, at the rate of four per cent. per annum, payable in said city in like gold coin, semi-annually on the first days of February and August in each year, and also on February 1, 1904, and on the first day of February of each subsequent year, a *pro rata*
37 share of any amount by which the dividends and interest which shall have been paid in

cash during the preceding calendar year upon the collateral on deposit with the trustee, as security for the payment of the issue of bonds of which this is one, shall exceed four per cent. upon the amount of such bonds outstanding.

Both the principal of this bond and said interest and dividend payments are payable without deduction for any tax or taxes which the railroad company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any State, county or municipality therein.

This bond is one of a series of coupon bonds and registered bonds of the railroad company, known as the "Oregon Short Line four per cent. and participating twenty-five year gold bonds," issued and to be issued under a trust indenture dated July 17, 1902, executed by the railroad company to the Equitable Trust Company of New York, as trustee, and equally secured by the deposit and pledge with said trustee, subject to said trust indenture, of common stock of the Northern Securities Company, the aggregate amount of such bonds not to exceed the par value of such stock of the Northern Securities Company deposited and to be deposited with said trustee. Reference is hereby made to said trust indenture for a statement of the nature and extent of the security, the rights of the holders of bonds under the same, and the terms and conditions upon which the bonds are issued and secured. All or any of said bonds may be redeemed at a premium of two and one-half per cent. of their face value and accrued interest and dividend payments as provided in said trust indenture on any first day of February or August upon three calendar months' previous notice.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the books of the railroad company, at the city of New York, upon surrender and cancellation of this bond, and a new registered
38 bond will be issued to the transferee in exchange therefor, as provided in said trust indenture, and on payment, if the railroad company shall so require, of the transfer fee therein provided for. This registered bond may be exchanged, as provided in said trust indenture, for coupon bonds (with all unmatured and unpaid coupons attached) having the same aggregate par value, subject to

such regulations governing such exchange as shall be, from time to time, established by the railroad company.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the trustee hereon endorsed.

In witness whereof, the Oregon Short Line Railroad Company has caused these presents to be signed by its president or its vice-president, and its corporate seal to be hereunto affixed and to be attested by its secretary or an assistant secretary, the — day of ——, 19—.

OREGON SHORT LINE RAILROAD COMPANY,
By —— ——, President.

Attest:
—— ——, Secretary.

[Form of Trustee's Certificate.]

Form of trustee's certificate.

This is to certify that this bond is one of the bonds described in the within mentioned trust indenture dated July 17, 1902, and executed by the Oregon Short Line Railroad Company to the undersigned, as trustee.

THE EQUITABLE TRUST COMPANY OF NEW YORK, Trustee,
By —— ——, Secretary.

39 Now, therefore, this trust indenture, witnesseth

That in order to secure the payment of the principal and interest of all said bonds at any time issued and outstanding under this trust indenture, and such dividend payments as may become due thereon, according to the tenor, purport and effect of said bonds, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which said bonds are issued, received and held, and for and in consideration of the premises and of the acceptance or purchase of said bonds by the holders thereof, and of the sum of one hundred dollars, lawful money of the United States of America, to it duly

paid by the trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Oregon Short Line Railroad Company, party of the first part, has pledged, and by these presents does pledge, with the Equitable Trust Company of New York, as trustee, upon the trusts and subject to the terms and conditions herein expressed, all and singular the shares of the par value of one hundred dollars ($100) each of the common capital stock of the Northern Securities Company, for which certificates indorsed for transfer in blank, or accompanied by instruments of transfer in blank, shall from time to time be deposited with said trustee by the railroad company subject to the provisions of this trust indenture.

Pledging clause.

Stock pledged.

But, in trust, nevertheless, for the equal and proportionate benefit and security of all holders of the bonds and coupons issued or to be issued under and secured by this trust indenture, and for the enforcement of the payment of said bonds and the interest and dividend payments thereon, when payable, according to the tenor, purport and effect of such bonds and this trust indenture, and to secure the performance and observance of, and compliance with, the covenants and conditions of this trust indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof, or by reason of the purpose of its issue, so that each and every bond issued or to be issued hereunder shall have the same right, lien and privilege under and by virtue of this trust indenture, and so that every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if all had been duly issued, sold and negotiated simultaneously with the execution and delivery hereof.

Pledged in trust.

This trust indenture further witnesseth that the railroad company has agreed and covenanted, and hereby does agree and covenant, with the trustee, and with the respective holders from time to time of the said bonds and coupons, or any thereof, as follows, that is to say:

Article first. The coupon and registered bonds issued under and secured by this trust indenture, together with the coupons pertaining to the coupon bonds, shall be substantially of the tenor

Issue of bonds.

and purport above recited, and shall be known as the "Oregon Short Line four per cent. and participating twenty-five year gold bonds." The coupon bonds shall be of the denomination of one thousand dollars ($1,000) each, and the registered bonds shall be of the denomination of one thousand dollars ($1,000) each or of such multiples of one thousand dollars as the board of directors of the railroad company shall from time to time authorize. The registered bonds shall bear interest only from the first day of February or of August, as the case may be, next preceding their respective dates of issue. Said bonds shall be consecutively numbered, and shall from time to time be executed on behalf of the railroad company by its president or its vice-president, and its corporate seal shall be thereunto affixed and attested by its secretary or an assistant secretary. The bonds shall then be delivered to the trustee for certification by it and the trustee shall thereupon certify and deliver said bonds to the railroad company, or upon its order, as hereinafter in article second hereof provided, and not otherwise. In case the officers who shall have signed or sealed any of said bonds shall cease to be such officers of the railroad company before the bonds so signed or sealed shall have been actually certified by the trustee or delivered, such bonds may, nevertheless, be adopted by the railroad company, and upon the written request of the railroad company shall be certified and delivered subject to the provisions of article second hereof as though the persons who signed or sealed such bonds had not ceased to be officers of the railroad company. The coupons to be attached to coupon bonds shall be authenticated by the engraved signature of the present treasurer or of any future treasurer of the railroad company, and the railroad company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually certified and delivered or issued. The first coupon shall be payable February 1, 1903, and shall represent interest to that date from August 1, 1902. Only such bonds shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, exe-

Execution of bonds.

Delivery of bonds.

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Coupons.

cuted by the trustee, shall be secured by this trust indenture or entitled to any lien, right or benefit hereunder; and such certificate of the trustee upon any such bond executed on behalf of the railroad company shall be conclusive evidence that the bond so cer-ified has been duly issued hereunder and that the holder is entitled to the benefit of the trusts hereby created. Before certifying or delivering any coupon bond, all coupons appertaining thereto then matured shall be cut off, canceled and delivered by the trustee to the railroad company. The aggregate amount of all the bonds which may be certified, issued and outstanding under this trust indenture or entitled to the security hereof shall not at any time exceed the par value of the common stock of the Securities Company deposited with the trustee and pledged hereunder. The railroad company and the trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinafter authorized, and the bearer of any coupon appertaining to any such bond, whether registered or not, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the railroad company nor the trustee shall be affected by any notice to the contrary.

Aggregate amount of bonds.

42

Payment of unregistered bonds and coupons to bearer.

The railroad company further agrees and covenants that it will keep at an agency to be maintained by it in the city of New York, or cause to be kept at some bank or trust company in said city, a sufficient register or registers of bonds issued hereunder, which shall at all reasonable times be open for inspection by the trustee and any holder of bonds issued hereunder; and that, upon presentation for such purpose, the railroad company will register or cause to be registered therein, under such reasonable regulations as it may prescribe, any bonds issued under the provisions hereof. The holder of any coupon bond issued hereunder may have the ownership thereof registered on said books, and such registry noted on the bond, after which no transfer shall be valid unless made on the said books by the registered holder thereof in person or by his attorney duly authorized, and similarly noted on the bond; but the same may be discharged from registry by being in like manner transferred to

Register.

Registration of bonds.

bearer, and thereupon transferability by delivery shall be restored; but such bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, but every such coupon shall continue to pass by delivery, and shall remain payable to bearer. The holder of any coupon bond or bonds may, at his option, at any time surrender the same for cancellation with all unmatured coupons belonging thereto and receive in exchange therefor a like amount in registered bonds without coupons, as hereinafter provided.

Exchange of coupon for registered bonds.

43

Whenever any coupon bond or bonds issued under and secured by this trust indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the railroad company shall issue, and the trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount in registered bonds without coupons. Whenever any registered bond shall be surrendered for transfer, the railroad company shall issue, and the trustee shall certify and deliver to the transferee a like amount in new registered bonds. Any registered bond may in like manner be surrendered and exchanged for an equal amount in face value of coupon bonds with all unmatured and unpaid coupons attached and any coupon bonds so delivered shall have the same numbers as those in exchange for which the registered bond was issued. In every case of such exchange or transfer, the trustee shall forthwith cancel the surrendered bond or bonds and coupons, and shall deliver the same to the railroad company; but the number shall be preserved so as to identify and show for what bonds the coupon or registered bonds have been exchanged or transferred as the case may be. For any exchange of coupon bonds for registered bonds, or of registered bonds for coupon bonds, or for any transfer of registered bonds, the railroad company may make a charge not exceeding one dollar for each new registered bond or coupon bond issued upon such exchange or transfer.

Transfer of registered bonds.

Exchange of registered for coupon bonds.

Charge for exchange or transfer.

Temporary bonds.

Until the said coupon and registered bonds intended to be secured hereby can be engraved and prepared, the railroad company may execute and deliver printed or lithographed bonds, either reg-

istered or negotiable by delivery, and substantially of the tenor of the bonds hereinbefore recited, except that no coupons shall be attached to said bonds; and the same may be for the
44 payment of one thousand dollars ($1,000), or any multiple thereof, as the railroad company shall determine. All such printed or lithographed bonds shall bear upon their face the words "Temporary Oregon Short Line four per cent. and participating twenty-five year gold bond exchangeable for engraved bonds," and shall be certified by the trustee in the same manner as the bonds hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the holder is entitled to the benefit of the trust hereby created. Such printed or lithographed bonds duly issued and certified hereunder shall be exchangeable for engraved bonds to be issued hereunder and upon any such exchange, said printed or lithographed bonds shall be forthwith canceled by the trustee and delivered to the railroad company. Until so exchanged, the said printed or lithographed bonds shall in all respects be entitled to the lien and security of these presents, as bonds issued and certified hereunder; and interest and dividend payments when and as payable shall be paid and endorsed thereon.

Replacing bonds mutilated or destroyed.

In case any coupon bond issued under this trust indenture or the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the railroad company, in its discretion, may issue, and thereupon the trustee shall certify and deliver, a new bond of like tenor and date, bearing the same serial number as the one mutilated or destroyed, in exchange and substitution for and upon cancellation of the mutilated bond or coupons, or in lieu of and substitution for the same if destroyed. In case of destruction, the applicant for a substituted bond or coupons shall furnish to the railroad company evidence of the destruction of such bond or coupons so destroyed, which evidence must be satisfactory to the railroad company in its discretion.

Article second. The bonds issued and to be issued under and secured by this trust indenture

Certification and delivery of bonds.

shall, upon the execution and delivery
45 hereof, or as soon thereafter as may from time to time be required by the railroad company, be certified by the trustee and delivered to the railroad company, or upon its written order under its corporate seal, executed by its president or a vice-president and by its secretary or treasurer as follows:

Whenever the railroad company shall tender, or cause to be tendered, to the trustee certificates for any of the shares of the common capital stock of the Securities Company in amounts of one thousand dollars ($1,000) par value, or multiples thereof, accompanied by instruments of transfer in blank or indorsed for transfer in blank, the trustee shall receive the same, and in exchange therefor shall certify and deliver to the railroad company, or upon its order, an amount to the said bonds equal in face value to the par value of the shares of capital stock so tendered and received. Such shares of capital stock received by the trustee under this section shall be held by the trustee as pledged hereunder as security for the *pro rata* payment of the bonds from time to time issued hereunder, and the interest and dividend payments thereon. The aggregate amount of the bonds which may be issued hereunder shall be limited only by the amount in par value of the said shares of stock of the Securities Company from time to time deposited hereunder.

Covenant to pay principal, interest and dividend payments.

Article third. The railroad company agrees and covenants that it will duly and punctually pay, or cause to be paid, to every holder of any bond issued hereunder and secured hereby the principal, interest and dividend payments accruing thereon, all in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the dates and place and in the manner mentioned in said bond or in the coupons thereto appertaining, according to the true intent and meaning thereof, without deduction from either principal or interest or dividend
46 payments for any tax or taxes which the railroad company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any State, county or municipality therein. The interest and dividend payments on coupon bonds shall be payable only upon presentation and surrender of

the respective coupons annexed to said coupon bonds as such coupons respectively mature; and when and as paid all coupons shall forthwith be canceled by the railroad company.

Dividend payments defined.

Article fourth. In addition to paying interest at the rate of four per cent. per annum upon said bonds, as hereinbefore provided, the railroad company hereby agrees and covenants to pay to the respective holders of said bonds on the first day of February, 1904, and on the first day of February of each year thereafter, a *pro rata* share of any amount by which the dividends and interest which shall have been paid in cash during the previous calendar year upon the collateral on deposit with the trustee (including not only stock of the Securities Company but any other stock, bonds or other securities that may become subject to this trust indenture as herein provided) shall exceed four per cent. upon the face amount of the outstanding bonds secured hereby. The amounts so payable are herein and in said bonds referred to as "dividend payments." So long as it shall not be in default in the payment of the principal of said bonds or the interest and dividend payments payable thereon, the railroad company shall, except as herein otherwise provided, be entitled to collect and use for its own purposes all the dividends and interest in respect of the deposited collateral. The dividend payments, measured by such dividends and interest paid in cash as aforesaid, shall be payable by the railroad company by way of interest in addition to four per cent. per annum upon the bonds secured hereby. Interest allowed by the trustee upon money on deposit hereunder shall not be deemed interest upon deposited collateral for the purpose of determining the amount of any dividend payment, but any such interest shall be payable to the railroad company so long as it shall not be in default as aforesaid. No dividend, increase or income in respect of the deposited collateral which shall be payable in stock or bonds, or otherwise than in money, and no right or privilege granted to the owner or holder of such collateral or any part thereof, to subscribe for or purchase stocks, bonds or other securities issued by the Securities Company, or by any other corporation, shall be deemed dividend or interest for the purpose of determining the amount of any

Until default railroad company shall collect dividends and interest on deposited collateral.

Interest allowed by trustee not deemed interest upon deposited collateral.

47

dividend payments under this trust indenture. Said dividend payments shall be payable, in the case of coupon bonds, upon the presentation and surrender of the respective February coupons, beginning with the coupon maturing February 1, 1904, and in the case of registered bonds, to the registered holders thereof.

When dividend payments shall be made.

Information concerning dividends and other income.

For the purpose of supplying information to bondholders, the railroad company shall, on or before the 10th day of January in each year, beginning with the year 1904, upon the written request of the trustee, file with the trustee a statement in writing, under its corporate seal, signed by its president, vice-president or treasurer, certifying the amount of dividends and other income received in cash during the preceding calendar year in respect of the collateral on deposit with the trustee.

Covenant not to extend interest.

Article fifth. In order to prevent any accumulation after maturity of coupons, or of claims for interest upon registered bonds, the railroad company agrees and covenants that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby; and that it will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding said coupons or claims for interest upon registered bonds, or in any other manner. In case the time for payment of any such coupon or claim for interest upon any bond secured hereby shall be so extended, whether or not such extension be by or with the consent of the railroad company such coupon or claim for interest shall not be entitled, in case of default hereunder, to the benefit or security of this trust indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding and of all matured coupons and claims for interest on such bonds, the payment of which has not been so extended.

Interest extended not secured by this trust indenture.

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Covenant to discharge taxes, etc.

The railroad company agrees and covenants that it will from time to time duly pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the shares of stock hereby pledged, or upon any other property which may become subject to the lien hereof, or upon any part thereof, or upon the income or profits thereof, the lien of which might or could be held

prior or superior to the lien of this trust indenture, so that the priority of this trust indenture shall be fully preserved in respect of all such shares of stock and other property; and that it will also pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the estate of the trustee, or upon the interest of the holder of any bond or bonds or coupons hereby secured in said shares of stock or other property; provided, however, that the railroad company shall not be required to pay any such taxes, assessments or governmental charges so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof.

Railroad company may, in good faith, contest payment of taxes, etc.

The railroad company agrees and covenants that this trust indenture is and will always be kept a first lien upon all the shares of stock described in the granting clauses hereof, and upon all other property which may become subject to the lien hereof, and that it will not create or suffer to be created or to accrue or to exist any lien or charge having priority to, or preference over, the lien of this trust indenture upon said pledged shares of stock or other property, or any part
49 thereof, or upon the income thereof; provided, however, that it shall not be required to pay any such liens or charges so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof.

Covenant to keep this trust indenture a first lien.

The railroad company agrees and covenants that it will, at all times until the payment of the principal of the bonds secured by this trust indenture, either keep an agency in the city of New York where bonds and coupons may be presented for payment and where notices and demands in respect of said bonds and coupons may be served, or designate by written notice to the trustee and by advertisement a bank or trust company in said city for such purposes. In default of any such agency or any such designation, presentation and demand may be made and notices served at the office of the trustee.

Covenant to keep agency in New York.

Article sixth. The power to vote upon, or consent in respect of, any shares of stock or other securities having voting powers that may be deposited and pledged hereunder shall be exercised by the railroad company as follows: So long as there shall be no default in the payment of the principal or interest of the bonds hereby secured or any

Voting power on pledged shares.

dividend payment payable thereon, the certificates for the said shares of stock in the name of the railroad company, or of such persons as the railroad company shall from time to time designate, shall remain in the trustee's possession, indorsed for transfer in blank, or accompanied by instruments of transfer in blank, as aforesaid, and the railroad company shall have power to vote or consent in respect of said shares of stock, personally or by proxy, for any purpose not inconsistent with the provisions of this trust indenture. But if default shall be made in the payment of any interest or dividend payment on any bonds secured hereby or in the payment of the principal of any such bonds, then, and in each and every such case, the trustee may in its discretion, and so far as it may be able, cause all shares of stock deposited and pledged hereunder to be transferred into its name or the name of its nominee. In the event of such default, and during the continuance of the same, the voting power on the said shares may be exercised by means of proper proxies, which shall, so far as the trustee is able, be given or procured by the trustee and delivered to such person or persons as may be designated or appointed by the holders of a majority in interest of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments in writing duly signed by such holders or their authorized agents, as hereinafter provided; but until the holders of a majority in interest of the bonds hereby secured and then outstanding shall make such designation or appointment, the trustee may exercise the said voting power in its discretion.

Upon default stock may be transferred to trustee's name.

Trustee or appointee of majority of bondholders to vote stock during default.

Upon the termination of any such default, any shares of stock which may stand in the name of the trustee, or of its nominee, shall be transferred to the name of the railroad company, or its nominee or nominees, upon the railroad company providing the moneys necessary to pay any taxes and other expenses incident to such transfer; and the railroad company or its nominee or nominees as the case may be, shall forthwith indorse for transfer in blank the new certificate or certificates for such stock, and such certificate or certificates shall remain on deposit with the trustee, subject to this trust indenture.

Re-transfer of stock on termination of default.

Pledge of shares not to prevent consolidation, merger or sale.

Article seventh. The deposit and pledge hereunder of said shares of stock, or of any other securities which shall become subject to this indenture, shall not prevent the consolidation, union or merger with any other corporation of the Securities Company, or of any other corporation by which said securities shall have been issued, or the sale of its property or the distribution of its assets. In any such case the trustee shall receive such amounts of stock, bonds or other securities, or money, or of either or all of them, as the holders of the pledged shares of stock of the Securities Company or other pledged securities, as the case may be, shall be entitled to receive and upon receipt thereof shall surrender the deposited stock certificates or other securities. The trustee shall also receive any moneys which shall be payable upon or under any of the deposited stock or other securities in payment or liquidation thereof or otherwise on account of the principal thereof. The trustee shall, upon the written request of the railroad company, subject the deposited shares of stock or other deposited securities to any plan for the reorganization or readjustment of the Securities Company, or of the corporation by which such other securities were issued, provided a majority of the entire capital stock of the Securities Company at the time issued and outstanding, including the stock deposited hereunder, or a majority of the entire issue outstanding of the other securities, including those on deposit hereunder, shall participate in such plan, and in such case the trustee shall receive such certificates of deposit, stocks, bonds or other securities and cash, if any, as shall be apportionable under such plan to such deposited stock or other securities.

Trustee to hold other securities.

Trustee shall subject deposited shares to plan for reorganization.

Trustee shall sell deposited shares upon request of the railroad company.

The trustee shall upon the written request of the railroad company, sell the deposited shares of the Securities Company, or any other deposited securities, at such price and upon such terms, whether payable in cash or in stocks, bonds or other securities, or partly in cash and partly in securities, as shall be directed by the railroad company, provided the holders of a majority of the entire capital stock of *of* the Securities Company at the time outstanding, or if the sale be of other securities, a majority of the entire issue thereof, including the pledged shares of stock or other securities, shall join in such sale at the same price and upon the same terms.

Covenant to deposit surplus for further security.

The railroad company agrees and covenants that in case the Securities Company, or any other corporation whose stock shall be on deposit hereunder, shall hereafter make any distribution of surplus, by dividend or otherwise, which shall
52 be payable in stock, bonds or other securities, it will either deposit with the trustee hereunder, for the further security of the bonds secured hereby, such an amount of such stock, bonds or other securities as shall be received by it upon such distribution in respect of the shares of stock at the time on deposit hereunder, or, at the option of the railroad company, pay to the trustee in cash an amount equal to the market value of the stocks, bonds or other securities at the time of delivery upon such distribution. If the Securities Company, or any other corporation whose stock or other securities shall be on deposit hereunder, shall at any time accord to the holders of such deposited stock or other securities any privilege or right to subscribe for or purchase stock or other securities to be sold or issued by such corporation, the railroad company shall, in case it shall exercise or sell such right or privilege, pay to the trustee, either in cash, or, at the option of the railroad company, in the new shares of stock or other securities (at their market value at the time of their delivery upon such issue or sale as aforesaid), an amount equal to the aggregate value of such right or privilege in respect of the deposited shares or other securities. The value of any such subscription right or privilege shall for the purposes hereof be the price at which it was sold by the railroad company, if it shall have been sold, and if exercised but not sold, either its market value at the time it was exercised, or, at the option of the railroad company, its appraised value at such time as determined by an appraiser appointed by the railroad company and approved by the trustee, or, in default of such appointment, by an appraiser appointed by the trustee.

Stock privileges.

Appraisal of stock privileges.

Shares to be endorsed in blank.

Any stock certificates or certificates of deposit and also any bonds or other securities (unless they be bearer bonds or securities) received by the trustee as in this article provided, shall be in the name of the railroad company, or of such person or persons as the railroad company shall designate, and shall be endorsed for transfer in blank or

accompanied by instruments of transfer in
53 blank, and all such deposited stock certificates, certificates of deposit, bonds and other securities shall remain on deposit with the trustee hereunder, and, unless disposed of as herein provided, shall be held subject to the provisions hereof as security for the payment of the bonds secured hereby and the interest and dividend payments thereon.

Redemption of pledged stock.

The trustee shall, whenever so directed in writing by the railroad company, surrender and deliver to the railroad company or upon its order any or all of the pledged shares of stock of the Securities Company upon the payment to the trustee of one hundred and five dollars ($105) per share and accrued interest and any dividend payment that may be due, all in gold coin of or equal to the present standard of weight and fineness, and in case of any such surrender and delivery, the railroad company shall pay to the trustee such additional sum, if any, as shall be necessary for the purchase or redemption as hereinafter provided of one thousand dollars face value of the bonds secured hereby for every ten shares of stock surrendered.

—redemption of bonds with proceeds.

Any cash received by the trustee under any of the provisions of this article shall be applied to the redemption, in the manner hereinafter provided, of bonds secured hereby, except to such extent as such cash shall be applied, as herein next provided, to the purchase of bonds. Prior to the beginning of the publication of the notice of an intention to redeem bonds with cash on deposit hereunder, the trustee shall, at the written request of the railroad company, apply such cash, or any part thereof, to the purchase upon the open market of bonds secured hereby, provided they can be purchased at a price not exceeding one hundred and two and one-half per cent. of their face value and accrued interest.

Trustee shall redeem bonds if railroad company does not.

In case the railroad company shall fail to take the necessary proceedings to accomplish the redemption of bonds with moneys received as in this article provided, on the first interest day on which such redemption can be made, then and in that
event, the trustee shall, upon its own motion,
54 redeem, on the first interest day on which such redemption can be made, so many of said bonds as may be redeemed with such moneys;

and in such case the trustee shall, in place of the railroad company, take the proceedings provided for in article fourteenth hereof, and the notices therein provided to be issued by the railroad company shall be issued by the trustee. The trustee may, however, in such case withhold from the moneys in its hands an amount sufficient to cover its compensation and expenses in and about such redemption.

Compensation of trustee.

During default trustee may and upon request of holders of majority of bonds shall act.

No action shall be taken by the trustee at the request of the railroad company pursuant to the authority conferred by this article, if the railroad company be in default in the payment of the principal or interest on the bonds secured hereby; but during any such default any action in respect of the deposited securities hereby required to be taken by the trustee upon the written request of the railroad company may be taken by the trustee, in its discretion, and shall be taken by it upon the request in writing of the holders of a majority in amount of the bonds hereby secured at the time outstanding and upon the trustee being indemnified to its satisfaction. Any request of the railroad company, as in this article provided, shall be expressed by a certified copy of a resolution of the board of directors or of the executive committee of the railroad company. The trustee may accept the certificate of the president, or vice-president, and secretary or treasurer of the railroad company, as conclusive evidence of any fact or facts upon which any action by the trustee as provided in this article may depend, or upon which it may desire or require information for the purposes of such action; and such certificate shall be full protection to the trustee for any action taken upon the faith thereof. The railroad company shall reimburse the trustee for all expenses by way of counsel fees or otherwise incurred by it in connection with any change in the securities pledged hereunder, as in this article provided, and the trustee may in its discretion require that the payment of such expenses be secured to its satisfaction in advance of taking any such action.

Form of request of railroad company.

Indemnity of trustee.

Until default railroad company to collect dividends, income, or increase on deposited shares.

Article eighth. So long as the railroad company shall not be in default in the payment of the principal of the bonds secured hereby, or of the interest or dividend payments payable thereon, it shall collect and receive any and all dividends,

income or increase in respect of said deposited shares of stock of the Securities Company or any other securities deposited hereunder, and the trustee shall pay or deliver to the railroad company, to be disposed of as herein provided, all moneys, bonds, scrip, shares of stock or other securities which it may receive by way of dividends, income or increase upon the deposited collateral.

Application of dividends, etc., upon default.

In case, however, the railroad company shall be in default in the payment of the principal of any of the bonds secured hereby, or the interest or dividend payments payable thereon, then, during such default, all dividends, income or increase upon the deposited shares of stock or other securities shall be collected and received by the trustee and shall be set apart, held and applied as follows:

—first, to pay expenses of trustee.

First. To pay any sum which at the time may be due to the trustee for compensation or expenses in the administration of the trusts hereby created, or to the reimbursement of advances made or incurred by the trustee pursuant to any provision of this trust indenture.

—second, to pay interest and dividend payments.

Second. To pay the semi-annual interest and any dividend payments which shall be due or payable on the bonds hereby secured, with interest on overdue installments of interest, to the holders of the coupons for such interest and dividend payments upon their surrender and cancellation, or to the registered holders of the registered bonds. In case the amount so received or collected by the trustee shall not be sufficient to pay in full the whole of such interest and dividend payments for the time being due and unpaid, the trustee shall apply the same to the payment of such interest and dividend payments in the order in which the same shall have become due, ratably and without discrimination among the holders of the bonds and coupons entitled thereto.

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—third, to pay balance to railroad company unless principal due.

Third. To pay to the railroad company, for its own use and benefit, any balance remaining after making the foregoing payments; provided, however, that if the railroad company be at the time in default in the payment of the principal of any of the bonds hereby secured any such balance shall, during such default, be held and disposed

of in the same manner as proceeds of the sale of the pledged shares of stock.

Right of trustee to declare principal due in case of default.

Article ninth. In case default shall be made in the payment of any interest or dividend payment on any bond hereby secured, and any such default shall continue for a period of three months, the trustee may, and upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, shall, by notice in writing delivered to the railroad company, declare the principal of all bonds secured hereby then outstanding to be due and payable immediately; and, upon any such declaration, the same shall become and be immediately due and payable, anything in this trust indenture or in said bonds contained to the contrary notwithstanding. This provision is, however, subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon such bonds (with interest on overdue installments of interest) and all unpaid dividend payments and the expenses and compensation of the trustee shall be paid by the railroad company or be collected out of the accrued dividends upon the shares of stock deposited hereunder before any sale thereof shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the railroad company and to the trustee may waive such default and its consequences, and obtain from the trustee a rescission of such declaration of the maturity of the principal; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

Waiver of default.

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Article tenth. In case (1) default shall be made in the payment of any interest or dividend payment on any bond hereby secured or in the payment of the principal of any such bond; or in case (2) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the railroad company, and any such last-mentioned default shall continue for a period of three months after written notice thereof to the railroad company from the trustee or from the holders of five per cent. or more in amount of the outstanding bonds hereby secured, then, and in each and every such case, the trustee

may, and upon the request in writing of the holders of a majority in amount of the bonds hereby secured at the time outstanding shall, sell at public sale in the manner hereinafter provided, the shares of stock and other securities pledged hereunder, either in one lot or in several lots, as may be directed in writing by the holders of a majority in amount of said bonds, or in the absence of such direction, as may seem best to the trustee; or the trustee may forthwith proceed to protect and enforce its rights and the rights of bondholders under this trust indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of the pledge herein provided for, or for the enforcement of any other appropriate legal or equitable remedy, as the trustee shall deem most effectual in support of any of its rights or duties hereunder. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the trustee or to the holders of bonds hereby secured is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this trust indenture to the trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient. No delay or omission of the trustee or of any holder of bonds hereby secured to exercise any right or power, arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. In case the trustee shall have proceeded to enforce any right under this trust indenture by sale, foreclosure or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the trustee, then, and in every such case, the railroad company and the trustee shall severally and respectively be restored to their former position and rights hereunder in respect of the shares of stock and other securities pledged hereunder, and all rights, remedies and powers of the trustee shall

Right of trustee to sell in case of default.

Right of trustee to institute legal proceedings.

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Remedies cumulative.

Delay or omission of trustee not to impair rights hereunder.

Upon termination of unsuccessful proceedings parties to be restored to former position.

continue as though no such proceedings had been taken.

Railroad company to join in deed.

In case the power of sale hereby authorized be exercised, the railroad company shall join in any deed of conveyance or other writing evidencing such sale.

Notice of sale.

Article eleventh. Notice of any sale under or by virtue of the power of sale herein contained, or pursuant to judicial proceedings, shall state the time when and the place where the same is to be made, and shall contain a brief general description of the shares of stock or other securities to be sold, and shall be published once in each week for four successive weeks prior to such sale in a newspaper published in the city of New York; and if the sale be pursuant to judicial proceedings such notice shall also comply with any requirement of statute or rule or order of court as to contents, or time of publication or otherwise. The trustee may adjourn any such sale, or cause the same to be adjourned from time to time, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and, without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned. In case of such sale of said shares of stock, or other securities, or any part thereof, the whole of the principal sum of the bonds hereby secured, if not previously due, shall, at the option of the trustee, or of the holders of a majority in interest of the bonds hereby secured then outstanding, become immediately due and payable, anything in said bonds or in this trust indenture contained to the contrary not withstanding.

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Adjournment of sale.

Principal to become due on sale.

Conveyance to purchaser at sale.

The trustee and its successor or successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the railroad company, in its name and stead to make all necessary instruments of conveyance, sale and transfer of the shares or other securities, and for that purpose the trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons or corporations with like power, the railroad company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, the railroad company agrees and covenants that, if so requested

by the trustee, purchaser or purchasers, it will ratify and confirm such sale by executing and delivering to the trustee or to such purchaser or purchasers all such necessary and proper instruments as may be designated in such request. Any such sale or sales, either under the power of sale hereby granted and conferred or under or by virtue of judicial proceedings, shall divest all right, title, interest, estate, claim and demand whatsoever, either at law or in equity, of the railroad company of, in and to the property sold, and shall be a perpetual bar, both at law and in equity, against the railroad company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through or under the railroad company, its successors or assigns.

Application of proceeds of sale.

Article twelfth. In case of any sale upon default of the railroad company of the shares of stock or other securities pledged hereunder, whether under the power of sale hereby granted, or pursuant to judicial proceedings, the purchase money, proceeds or avails, together with any other sums which may then be held by the trustee or be payable to it under any of the provisions of this trust indenture as part of the trust estate, shall be applied as follows:

—first, to pay expenses, etc.

First. To the payment of the costs, expenses, fees and other charges of such sale, and a reasonable compensation to the trustee, its agents and attorneys, and to the payment of all expenses and liabilities incurred and advances or disbursements made by the trustee.

—second, to pay principal, interest and dividend payments.

Second. Any surplus then remaining, to the payment of the whole amount owing or unpaid upon the bonds hereby secured for principal, interest and dividend payments, with interest on the overdue installments of interest; and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal, interest and dividend payments, ratably according to the aggregate amount thereof, without preference or priority.

—third, surplus to rail road company.

Third. Any surplus then remaining, to the railroad company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

In case of any sale of the said shares of stock

Purchaser may apply bonds, etc., on purchase price.

or other securities, or any part thereof, as in this article provided, the purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to turn in or apply towards the payment of the purchase price
61 any bonds issued hereunder and any matured and unpaid interest and dividend payments and to be credited therefor on the purchase price to the extent of the value of such bonds, interest and dividend payments upon a distribution among the bondholders of the net proceeds of such sale after making the deductions allowable under the terms hereof for the costs and expenses of the sale and otherwise. But such bonds and claims for interest and dividend payments so applied in payment by the purchaser shall be deemed to be paid only to the extent so applied and credited. At any such sale, the trustee or any bondholders or their agents may bid for and purchase such shares of stock or other securities and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such shares of stock or other securities without further accountability. The receipt of the trustee or of the court officer conducting such sale shall be a sufficient discharge for the purchase money to any purchaser of the shares of stock or other securities or any part thereof, sold as aforesaid; and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of the purchase money upon or for any trust or purpose of this trust indenture, or be answerable in any manner whatsoever for any loss, misapplication or non-application of any such purchase money or any part thereof.

Trustee or bondholders may bid at sale.

Receipt for purchase price.

Purchaser need not see to application of purchase money.

Covenant to pay principal, interest and dividend payments to trustee in case of default.

Article thirteenth. The railroad company agrees and covenants that in case (1) default shall be made in the payment of any interest or dividend payment on any bonds hereby secured, and such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds, or by declaration as authorized
62 by this trust indenture, or by a sale of the pledged shares of stock as hereinbefore provided, then, upon demand of the trustee, it will pay

to the trustee for the benefit of the holders of the bonds and coupons hereby secured and then outstanding, the whole amount due and payable on all such bonds and coupons for principal or interest or dividend payments, or all of them, as the case may be, with interest upon the overdue principal and installments of interest; and, in case the railroad company shall fail to pay the same forthwith upon such demand, the trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the railroad company for the whole amount so due and unpaid. The trustee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the lien of this trust indenture upon the pledged shares of stock, and its right to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this trust indenture or by the foreclosure of the lien hereof; and, in case of a sale of the shares of stock pledged hereunder, and of the application of the proceeds of sale to the payment of the debt hereby secured, either under any power hereby granted or judicial decree, the trustee in its own name and as trustee of an express trust, shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any or all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment against the railroad company for any portion of the debt remaining unpaid, with interest. No recovery of any judgment by the trustee and no levy of any execution under any such judgment upon property subject to the lien of this trust indenture, or upon any other property, shall, in any manner or to any extent, affect or impair the lien of the trustee upon the share of stock and other property pledged and to be pledged hereunder, or any part thereof, or any rights, powers or remedies of the trustee hereunder, or any rights, powers or remedies of the holders of the bonds hereby secured; but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before, except as against the purchaser of the pledged shares at any sale made by the trustee hereunder or under

—suit therefor.

Lien not to be impaired by judgment or execution.

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Application of amount recovered.

judicial decree. Any money thus collected by the trustee, under this article shall be applied by the trustee, first, to the payment, at the option of the trustee, of the costs and expenses of the proceedings resulting in the collection of such moneys; and secondly, towards payment of the amounts then due and unpaid upon such bonds or coupons respectively, without any preference or priority of any kind, but ratably according to the amounts due and payable upon such bonds and coupons respectively at the date fixed by the trustee for the distribution of such moneys.

Redemption of all or part of bonds.

Article fourteenth. The railroad company may at any time redeem all or any of the outstanding bonds hereby secured at their face value and a premium of two and one-half per cent. and the accrued interest and dividend payments (if any) on any first day of February or August; provided that, if and so often as the railroad company shall be desirous of redeeming a part only of the then outstanding bonds, the particular bonds to be redeemed shall be ascertained by drawings by lot, to be made by the trustee, of so many of the said bonds as the said railroad company shall be desirous of redeeming, and provided also that not less than three calendar months' previous notice

Notice.

of the numbers of the bonds so drawn for redemption as last aforesaid, or (as the case may be) of the redemption of all the said bonds then outstanding, shall be given by mail to the holders of registered bonds at the addresses furnished by them to the railroad company and by publication at least once a week for twelve successive weeks in at least one daily newspaper in the city of New York,

64 and such notice shall state the numbers of the bonds so drawn or (as the case may be) the intention to redeem all of the bonds, and that the same will be redeemed at their face value and a premium of two and one-half per cent. and accrued interest and dividend payments (if any) on the first day of February or the first day of August specified in such notice (being not less than three or more than four calendar months from the date of the first publication of such notice) after which day interest and dividend payments upon the bonds so drawn shall cease to accrue.

—principal due thereupon.

Upon completion of the publication of such last-mentioned notice of redemption there shall become due and payable by the railroad company on the

day of redemption specified in such last-mentioned notice at the office or agency of the railroad company in the city of New York the principal of the bonds specified in such notice, together with the interest and dividend payments (if any) then due thereon and a premium of two and one-half per cent. of the face value of said bonds, and thereupon the railroad company shall pay such principal, interest, dividend payments (if any) and premium, if the said bonds are presented for payment. If the redemption of any bonds be upon the first day of August of any year, the railroad company shall deliver to the persons whose bonds are redeemed warrants entitling the bearer to receive upon surrender thereof on the following first day of February on'-half of the amount of any dividend payment which would have been payable on said date upon the bonds in respect of which such warrants were issued, if such bonds had not been redeemed.

August bonds upon redemption to receive warrants for dividend payments.

Any cash received under the provisions of article seventh shall, after deducting an amount sufficient to pay any unpaid compensation and expenses of the trustee, be available for the payment of said bonds to be redeemed as aforesaid as and when presented for payment, and the railroad company shall be required to pay to the trustee for the purposes of such redemption only such additional sum (if any) as may be necessary to redeem the bonds called for redemption.

Trustee to use cash received from merger, etc., to redeem bonds.

Unless default shall be made in the payment after presentation of the bonds specified in such notice as aforesaid, all interest shall cease to accrue upon such bonds after the day of redemption specified in said last-mentioned notice, and the coupons for interest subsequent to that date shall be and become void.

Interest to cease.

All bonds redeemed and paid as hereinbefore provided shall forthwith be canceled in the presence of a representative of the trustee and a representative of the railroad company, and the trustee shall thereupon note upon the trust indenture the fact of such cancellation, together with a memorandum of the numbers of the bonds so canceled, and shall thereupon deliver the bonds so canceled to the railroad company.

Redeemed bonds to be cancelled.

For every bond redeemed as herein provided otherwise than with money received by the trustee pursuant to article seventh hereof, the trustee

Pledged stock to be released.

shall, if and when requested in writing by the railroad company, release from the lien hereof and deliver to the railroad company a proportionate amount of the shares of the stock and of each class of other securities deposited and pledged hereunder.

Indemnity to and immunity of trustee.

Article fifteenth. The trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created which, in its opinion, will be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the trustee, furnish it reasonable security and indemnity against such expense or liability; nor shall the trustee be required to take notice of any default hereunder unless notified in writing of such default by one or more holders of the bonds hereby secured then outstanding; nor shall it be required to take any action in respect of any such default involving expense or liability, unless requested by an instrument in writing signed by the holders of not less than ten 66 per cent. in amount of the bonds hereby secured then outstanding and unless tendered reasonable security and indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request, nor this provision therefor, shall affect any discretion herein given to the trustee to take action in respect of such default, or to take action with or without any such request.

Counsel for trustee.

The trustee may, in its discretion, advise with legal counsel to be selected and employed by it at the expense of the railroad company, and anything done or suffered in good faith by the trustee in accordance with the opinion of counsel shall be conclusive in favor of the trustee on the railroad company and on all holders of bonds and coupons secured hereby.

Trustee to act on request of holders of 25 per cent. of bonds.

But in case of any default as aforesaid, it shall be the duty of the trustee, upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding and upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, or to exercise the power of sale herein conferred, or to commence appropriate judicial proceedings

by action, suit or otherwise, as the trustee shall deem most expedient in the interest of the holders of the bonds hereby secured.

Right of holders of majority of bonds to direct action of trustee.

Anything in this trust indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured then outstanding shall have the right from time to time, if they so elect and manifest such election by an instrument or concurrent instruments in writing executed and delivered to the trustee, to direct and control the method and place of conducting any and all proceedings for any sale of the shares of stock hereby pledged or any adjournment thereof, or for the foreclosure of this trust indenture, or any other action or proceeding hereunder.

No suit by bondholders permitted without prior request and indemnity to trustee.

67 Article sixteenth. No holder of any bond or coupon hereby secured shall have the right to institute any suit, action or proceeding at law or in equity upon or in respect of this trust indenture, or for the execution of any trust or power hereof, or for any other remedy under or upon this trust indenture, unless such holder shall previously have given to the trustee written notice of any existing default and of the continuance thereof as hereinbefore provided, nor unless also the holders of ten per cent. in amount of the bonds hereby secured then outstanding shall have made written request upon the trustee and shall have afforded to it reasonable opportunity either to proceed itself to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless such holder or holders shall have offered to the trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred in or by reason of such action, suit or proceeding, and the trustee shall have refused or neglected to comply with such request within a reasonable time thereafter; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the trustee, to be conditions precedent to the execution of the trusts and powers of this trust indenture and to any action or cause of action for foreclosure or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds or coupons shall have any right in any manner whatever to affect, disturb

or prejudice the lien of this trust indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Compensation of trustee.

Article seventeenth. The trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, which compensation, as well as all reasonable expenses necessarily in-

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Immunity of trustee.

curred and disbursed hereunder, the railroad company agrees to pay. The trustee shall not be responsible in any manner whatsoever for the recitals herein contained as to the acts or powers of the railroad company or its stockholders, nor shall it be concerned with or accountable for the use of any bond hereunder delivered to the railroad company, or the application of the proceeds of any such bond. The trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor for anything whatever in connection with this trust, except its own willful misconduct or gross negligence. The trustee shall be reimbursed and indemnified against any liability or damage it may sustain or incur in the premises.

Resignation of trustee.

The trustee, or any trustee hereafter appointed, may resign and be discharged from the trusts created by this trust indenture, by giving notice of such resignation to the railroad company, and also to the bondholders by publication at least twice a week for four successive weeks in a newspaper published in the city of New York, and by due execution of the conveyance herein required.

Removal of trustee.

The trustee may be removed at any time by an instrument in writing executed by the holders of a majority in amount of the bonds hereby secured then outstanding; but no such removal shall be made before default hereunder without the written consent of the railroad company. In case the trustee, or any trustee hereafter appointed, shall at any time resign or be removed or otherwise become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then out-

Appointment of successor trustee.

standing, by an instrument or concurrent instruments or counterparts signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared, that, in case there shall at any time be a vacancy in the office of trustee hereunder, the railroad company may, by an instru-
69 ment executed by order of its board of directors, appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. Anything herein to the contrary notwithstanding, the railroad company may at any time substitute as trustee hereunder, a trust company or banking institution having a capital and surplus aggregating at least one million dollars, and incorporated under the laws of some other State than the trust company or bank at the time acting as trustee hereunder, or if the trustee be a natural person, under the laws of some State other than the State of such trustees' residence. In case the railroad company shall elect to make such substitution it shall file with the trustee a notice in writing to that effect duly approved by its board of directors, which notice shall specify the name of the trust company or banking institution which is to become the trustee hereunder. The railroad company shall publish notice of the appointment of or substitution of a trustee once a week for four successive weeks in a newspaper published in the city of New York.

Railroad company may fill vacancy.

Railroad company may substitute trustee.

—notice of such substitution.

Any new trustee appointed or substituted by the railroad company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment be made by the bondholders within six months after the first publication of such last-mentioned notice, provided, however, that in no event shall a trustee be appointed by the bondholders who shall be a person residing in, or a corporation incorporated under the laws of a State other than the State of the residence or incorporation of the trustee to be superseded. If there be no such appointment by the bondholders, the trustee appointed or substituted by the company shall continue to act hereunder. If such new trustee appointed in place of the trustee, or of its successor in the trust, shall be a trust company or

Residence of new trustee.

Trustee may be a trust company or banking institution.

a banking institution, it shall be one in
70 good standing, and authorized to accept such trusts and having a capital and surplus aggregating at least one million dollars. One or more natural persons may, however, be appointed trustee or trustees hereof in case the holders of a majority in interest of the bonds secured hereby at the time outstanding shall so direct in writing.

—or an individual.

Acceptance of trust vesting pledged collateral in new trustee.

Any new trustee appointed or substituted hereunder shall execute, acknowledge and deliver to the railroad company an instrument accepting such appointment or substitution hereunder, and thereupon such new trustee shall, without any further act, deed or conveyance, become entitled to the possession of, and become vested with, all the shares of stock, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; but the trustee retiring shall, nevertheless, on the written demand of the new trustee, execute and deliver an instrument conveying and transferring to such new trustee, upon the trusts herein expressed, all the shares of stock, properties, rights, powers and trusts of the trustee so retiring, and shall duly deliver and pay to the new trustee so appointed in its place all shares of stock, properties and moneys held by it under this trust indenture. Should any instrument in writing from the railroad company be required by any new trustee for more fully and certainly vesting in and confirming to it the said rights, powers, trusts, and duties, then any and all such instruments in writing shall, on request of such new trustee, be made, executed, acknowledged and delivered by the railroad company. No trustee who shall resign or be removed or displaced as hereinbefore provided shall be required to deliver to the new trustee the securities pledged hereunder unless and until its compensation and expenses shall have been paid in full; and upon such delivery of said securities the outgoing trustee shall be discharged from all further liability hereunder, or to the holder of any bonds hereby secured.

Retiring trustee to execute instrument of transfer.

Railroad company to execute instruments of transfer.

Retiring trustee to be discharged from liability.

Defeasance.

71 Article eighteenth. If, when the bonds hereby secured shall have become due and payable, the railroad company shall well and truly pay or cause to be paid the whole amount of the principal, interest and dividend payments due upon

all of the bonds hereby secured then outstanding, or shall provide for such payment by depositing with the trustee hereunder, within six months before or at any time after the maturity of said bonds, for the payment of such bonds and interest thereon, the entire amount due or to become due for principal and interest, and shall also pay or cause to be paid all other sums payable hereunder by the railroad company, and shall well and truly keep, perform and observe all the things herein required to be kept, performed and observed by it according to the true intent and meaning of this trust indenture, then and in that case the shares of stock hereby pledged, and all rights and interests therein and thereto, shall revert to the railroad company, or to whosoever may be entitled thereto, and the estate, right, title and interest of the trustee therein shall thereupon cease, determine and become void; and the trustee shall, in such case, on demand of the railroad company, and at the cost and expense of the latter, execute an instrument of satisfaction and discharge of this trust indenture; otherwise, the same shall be, continue and remain in full force and effect.

Satisfaction of trust indenture.

Article nineteenth. The railroad company further agrees and covenants that it will also do, execute, acknowledge and deliver, or cause or procure to be done, executed or acknowledged and delivered, all and every such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the trustee all and singular the shares of stock hereby pledged, or intended so to be, as the trustee or a majority in amount of the holders of bonds issued and outstanding hereunder shall reasonably require for better accomplishing the provisions and purposes of this trust indenture and for
72 better securing payment of the principal of the bonds intended to be secured hereby and the interest and dividend payments thereon. All the covenants, stipulations, promises and agreements in this trust indenture contained by or on behalf of the railroad company shall be for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured, and shall bind and apply to the successors and assigns of said railroad company, whether so expressed or not.

Covenant for further assurance.

Covenant to waive stay or extension laws.

The railroad company further agrees and covenants that it will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force; nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the pledged shares of stock, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained or to the decree of any court of competent jurisdiction; nor will it, after any such sale or sales, claim or exercise any right under any statute to redeem the shares of stock so sold or any part thereof, or obstruct or impede the accepted purchaser from taking possession of the same; and it hereby expressly waives all benefit or advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the trustee, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Immunity of stockholders, officers, directors, etc., from personal liability.

No recourse under or upon any obligation, covenant or agreement contained in this trust indenture, or in any bond or coupon hereby secured, or under any judgment obtained against the railroad company or otherwise, shall be had against any incorporator, stockholder, officer or director of the railroad company, or of any successor corporation, either directly or through the railroad company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise. This trust indenture and the obligations hereby secured are solely corporate obligations, and no personal liability whatever shall attach to or be incurred by the stockholders, directors or officers of the railroad company, or of any successor corporation, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this trust indenture, or in any of the bonds or coupons hereby secured, nor shall any such personal liability be implied therefrom; and any and all personal liability of every name and nature, whether at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived.

COPY BOUND CLOSE IN CENTER

Form and proof of requests, etc., by bondholders.

Article twentieth. Any request or other instrument required by this trust indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor and may be executed by such bondholders in person, or by agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of coupon bonds, transferable by delivery, shall be sufficient for any purpose of this trust indenture, and shall be conclusive in favor of the trustee with regard to any action taken by it under such request or other instrument, if made in the following manner, viz: (1) The fact and date of the execution by any bondholder of any such request or of any other instrument or writing may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of New York, acknowledgments of deeds to be recorded in said State, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution. (2) The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depository (wheresoever situated) whose certificate shall be deemed satisfactory by the trustee, showing that at the date therein mentioned such person had on deposit with such depository, or exhibited to it the bonds described in such certificate. (3.) The ownership of registered bonds shall be proved by the books for the registry of such bonds provided for in article first hereof.

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Acceptance of trust.

Article twenty-first. The Equitable Trust Company of New York, party hereto of the second part, hereby accepts the trusts in this trust indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

Definitions.

Except when otherwise indicated, the words "the trustee," or "said trustee," or any other equivalent term, as used in this trust indenture, shall be held and construed

to mean the trustee or trustees for the time being, and the words "bond," "bondholder," "holder" and "person" shall include the plural as well as the singular number. The words "railroad company" herein used shall be deemed to include any successor to the Oregon Short Line Railroad Company by consolidation, merger, sale or otherwise and any action herein authorized to be taken by the railroad company may be taken by any such successor. The trustee shall not be responsible for the recording or filing of this trust indenture.

In witness whereof, the parties hereto of the first and second parts have duly caused these presents to be executed in their respective corporate names by their respective presidents or vice-presidents, and their respective corporate seals to be hereto affixed and attested by their re-
75 spective secretaries or assistant secretaries, as of the day and year first above written.

OREGON SHORT LINE RAILROAD COMPANY,
By E. H. HARRIMAN,
[SEAL.] President.

Attest:
ALEX. MILLAR, Secretary.

Signed, sealed and delivered on behalf of the Oregon Short Line Railroad Company in the presence of
CHARLES J. HOEHNLE.

THE EQUITABLE TRUST COMPANY OF NEW YORK,
By WILLIAM T. CORNELL,
[SEAL.] President.

Attest:
LAWRENCE L. GILLESPIE,
Secretary.

Signed, sealed and delivered on behalf of the Equitable Trust Company of New York in the presence of
T. H. SHIPMAN.

76 STATE OF NEW YORK, County of Orange, } ss.:

Acknowledgment by railroad company.

On the 18th day of July, in the year 1902, before me personally came E. H. Harriman, to me known, who, being by me duly sworn, did depose and say that he resided at Arden, county of Orange, State of New York; that he is the president of the Oregon Short Line Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

EDWARD H. SEAMAN,
[SEAL.] Notary Public, Orange County.

Nty. commission expires M'ch 30, 1904.

STATE OF NEW YORK, County of New York, } ss.:

Acknowledgment by trustee.

On the 18th day of July, in the year 1902, before me personally came William T. Cornell, to be known, who, being by me duly sworn, did depose and say that he resided in the city of New York, State of New York; that he is the president of the Equitable Trust Company of New York, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] WM. T. JACKSON,
Notary Public, Westchester County.

Certificate filed in New York county.

77 EXHIBIT C TO BILL OF COMPLAINT.

Transcript of Record in the Case of The United States of America, Complainant, *vs.* The Northern Securities Company and Others, Defendants.

Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } No. 789. C. Equity.

Transcript of Record.

Pleadings, etc.

78 UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY ET AL.

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79 Appearances.

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant, *v.* NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, *et al.*, Defendants.	Appearance.

The clerk will enter our appearance for the complainants in the above-entitled cause.

MILTON D. PURDY,
Attorney of the United States
for the District of Minnesota.
PHILANDER C. KNOX,
Attorney-General of the United States.
JOHN K. RICHARDS,
Solicitor-General of the United States.

Dated March 10, 1902.

(Indorsed:) United States circuit court, district of Minnesota, third division. The United States of America, complainant, *v.* Northern Securities Company and others. Appearance of M. D. Purdy, P. C. Knox, and J. K. Richards, for complainant. Ent'd C. R. B. page 84. Filed March 10, 1902. Henry D. Lang, clerk.

United States Circuit Court, District of Minnesota, Chancery Rule Register.

1902. March 10.

THE UNITED STATES OF AMERICA, Complainant, *v.* NORTHERN SECURITIES COMPANY and Others, Defendants.	C. Equity. No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of Milton D. Purdy, Philander C. Knox,
80 and John K. Richards as solicitors of said complainant be, and the same hereby is, entered.

HENRY D. LANG, Clerk.

(C. R. "B." page 84.)

Entered 789, C. E.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants.
No. 789, C. E. Petition.

(Indorsed:) Filed March 10, 1902. Henry D. Lang, clerk.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants.
No. 789. C. E.

Petition.

To the judges of the circuit court of the United States for the district of Minnesota:

Now comes the United States of America, by Milton D. Purdy, the United States attorney for the district of Minnesota, acting under direction of the Attorney-General of the United States, and brings this its proceeding by way of petition against the Northern Securities Company, a corporation organized and existing under the laws of the State of New Jersey; the Great
81 Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota; the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; James J. Hill, a citizen of the State of Minnesota and a resident of St. Paul, and William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, citizens of the State of New York, and residents of New York city, and, on information and belief, complains and says:

I.

The defendants, The Northern Pacific Railway Company and The Great Northern Railway Company, were, at the times hereinafter mentioned, and now are, common carriers, employed in the transportation of freight and passengers among the several States of the

United States and between such States and foreign nations, and, as such carriers so employed, were and are engaged in trade and commerce among the several States and with foreign nations.

II.

On and prior to the 13th day of November, 1901, the defendants, James J. Hill, William P. Clough, D. Willis James, and John S. Kennedy, and certain other persons whose names are unknown to the complainant, but whom it prays to have made parties to this action when ascertained (hereinafter referred to as James J. Hill and his associate stockholders), owned or controlled a majority of the capital stock of the defendant, The Great Northern Railway Company, and the defendants, J. Pierpont Morgan and Robert Bacon (members and representing the banking firm of J. P. Morgan & Co., of New York city), George F. Baker and Daniel S. Lamont, and certain other persons whose names are unknown to the complainant, but whom it prays to have made parties to this action when ascertained (hereinafter referred to as J. Pierpont Morgan and his associate stockholders), owned or controlled a majority of the capital stock of the defendant, The Northern Pacific Railway Company.

III.

The Northern Pacific Railway Company and the Great Northern Railway Company, at and prior to the doing of the acts hereinafter complained of, owned or controlled and operated two separate, independent, parallel, and competing lines of railway running east and west into or across the States of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, the Northern Pacific system, extending from Ashland, in the State of Wisconsin, and from Duluth and St. Paul, in the State of Minnesota, through Helena, in the State of Montana and Spokane, in the State of Washington, to Seattle and Tacoma, in the State of Washington, and Portland, in the State of Oregon, and the Great Northern system, extending from Superior, in the State of Wisconsin, and from Duluth and St. Paul, in the State of Minnesota, through Spokane, in the State of Washington, to Everett and Seattle, in the State of Washington, and to Portland, in the State of Oregon, with a branch line to Helena, in the State of Montana, thus furnishing to the public two parallel and competing transcontinental lines connecting the Great Lakes and the Mississippi river with Puget sound and the Pacific ocean. At the times mentioned, these two railway systems, which will hereafter be referred to respectively as the Northern Pacific system and the Great Northern system, each of which, with its leased and controlled lines, main and branch, aggregates over 5,500 miles in length, were the only transcontinental lines of railway extending across the northern tier of States west of the Great Lakes, from the Great Lakes and the Mississippi river

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to the Pacific ocean, and were then engaged in active competition with one another for freight and passenger traffic among the several States of the United States and between such States and foreign countries, each system connecting at its eastern terminals, not only with lines of railway, but with lake and river steamers to other States and to foreign countries, and at its western terminals with sea-going vessels to other States, Territories, and possessions of the United States and to foreign countries.

IV.

Prior to the year 1893 the Northern Pacific system was owned or controlled and operated by the Northern Pacific Railroad Company, a corporation organized and existing under certain acts and resolutions of Congress. During that year the company became insolvent, and the line was placed it the hands of receivers by the
83 proper courts of the United States. While in this condition, awaiting foreclosure and sale, an arrangement was entered into between a majority of the bondholders of the Northern Pacific Railroad Company and the defendant, The Great Northern Railway Company, for a virtual consolidation of the Northern Pacific and Great Northern systems and the placing of the practical control of the Northern Pacific system in the hands of the defendant, The Great Northern Railway Company. This arrangement contemplated the sale, under foreclosure, of the property and franchises of the Northern Pacific Railroad Company to a committee of the bondholders, who should organize a new corporation, to be known as the Northern Pacific Railway Company, which was to become the successor of the Northern Pacific Railroad Company; one-half of the capital stock of the new company was to be turned over to the shareholders of the defendant, The Great Northern Railway Company, which in turn was to guarantee the payment of the bonds of the Northern Pacific Railway Company. An agreement was to be entered into for the exchange of traffic at intersecting and connecting points and for the division of earnings therefrom. The carrying out of this arrangement was defeated by the decision of the Supreme Court of the United States in the case of Pearsall *v.* The Great Northern Railway Company (which was decided March 30, 1896, and is reported in the one hundred and sixty-first volume of the reports of said court, beginning on page 646, to which reference is made), in which it was held that the practical effect would be the consolidation of two parallel and competing lines of railway, and the giving to the defendant, The Great Northern Railway Company, a monopoly of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific, to the detriment of the public and in violation of the laws of the State of Minnesota.

V.

Early in the year 1901 the defendants, The Great Northern and Northern Pacific Railway Companies, acting for the purpose of promoting their joint interests, and in contemplation of the ultimate placing of the Great Northern and Northern Pacific systems
84 under a common source of control, united in the purchase of the total capital stock of the Chicago, Burlington and Quincy Railway Company, of Illinois, giving the joint bonds of the Great Northern and Northern Pacific Railway Companies, payable in twenty years from date, with interest at 4 per cent. per annum, for such stock, at the rate of $200 in bonds in exchange for each $100 in stock, and in this manner purchased and acquired about $107,000,000 of the $112,000,000 total capital stock of the Chicago, Burlington and Quincy Railway Company, or about 98 per cent. thereof. In this manner, at the time stated, the defendants, The Great Northern and Northern Pacific Railway Companies, secured control of the vast system of railway lines known as the Burlington system, about 8,000 miles in length, extending from St. Paul, in the State of Minnesota, where it connects with the Great Northern and Northern Pacific Railway systems, through the States of Minnesota, Wisconsin, and Illinois, to Chicago, in the State of Illinois, and from these two cities through said States and through the States of Iowa, Missouri, Nebraska, Colorado, South Dakota, Wyoming, and Montana, to Quincy, in the State of Illinois; to Burlington and Des Moines, in the State of Iowa; to St. Louis, Kansas City, and St. Joseph, in the State of Missouri; to Omaha and Lincoln, in the State of Nebraska; to Denver, in the State of Colorado; to Cheyenne, in the State of Wyoming, and to Billings, in the State of Montana, where it again connects with the Northern Pacific Railway system, these States lying west of Chicago and south of the States crossed by the Great Northern and Northern Pacific systems, and constituting the territory occupied in part by what is known as the Union Pacific Railway system, which has been and is a parallel and competing system within said territory with the said Burlington system.

VI.

The attempt to turn over a controlling interest in the stock of the Northern Pacific Railway Company to the Great Northern Railway Company and thus effect a virtual consolidation of the two railway systems, having thus, in the year 1896, been defeated by a decision of the Supreme Court of the United States, the de-
85 fendants James J. Hill and his associate stockholders of the defendant, The Great Northern Railway Company, owning or controlling a majority of the stock of that corporation, and the defendants J. Pierpont Morgan and his associate stockholders of the defendant, The Northern Pacific Railway Company, owning or

controlling a majority of the stock of that corporation, acting for themselves as such stockholders and on behalf of the said railway companies in which they owned or held a controlling interest, on and prior to the 13th day *day* of November, 1901, contriving and intending unlawfully to restrain the trade or commerce among the several States and between said States and foreign countries carried on by the Northern Pacific and Great Northern systems, and contriving and intending unlawfully to monopolize or attempt to monopolize such trade or commerce, and contriving and intending unlawfully to restrain and prevent competition among said railway systems in respect to such interstate and foreign trade or commerce, and contriving and intending unlawfully to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade or commerce theretofore enjoyed through the independent competition of said railway systems, entered into an unlawful combination or conspiracy to effect a virtual consolidation of the Northern Pacific and Great Northern systems, and to place restraint upon all competitive interstate and foreign trade or commerce carried on by them, and to monopolize or attempt to monopolize the same, and to suppress the competition theretofore existing between said railway systems in said interstate and foreign trade or commerce, through the instrumentality and by the means following, to wit: A holding corporation, to be called the Northern Securities Company, was to be formed under the laws of New Jersey, with a capital stock of $400,000,000, to which, in exchange for its own capital stock upon a certain basis and at a certain rate, was to be turned over and transferred the capital stock, or a controlling interest in the capital stock, of each of the defendant railway companies, with power in the holding corporation to vote such stock and in all respects to act as the owner thereof, and to do whatever it might deem necessary to aid in any manner such railway companies or enhance the value of their stock. In this manner, the individual stockholders of these two independent and competing railway companies were to be eliminated and a single common
86 stockholder, the Northern Securities Company, was to be substituted; the interest of the individual stockholders in the property and franchises of the two railway companies was to terminate, being thus converted into an interest in the property and franchises of the Northern Securities Company. The individual stockholders of the Northern Pacific Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Northern Pacific system, and the individual stockholders of the Great Northern Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Great Northern system, but having ceased to be stockholders in the railway companies and having become stockholders in the holding corporation, both were to draw their dividends from the earnings of both systems, collected and distributed by the holding corporation. In this manner, by making

the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established.

VII.

In pursuance of the unlawful combination or conspiracy aforesaid, and solely as an instrumentality through which to effect the purposes thereof, on the 13th day of November, 1901, the defendant, The Northern Securities Company, was organized under the general laws of the State of New Jersey, with its principal office in Hoboken, in said State, and with an authorized capital stock of $400,000,000. A copy of the articles of incorporation of such company is attached to and made a part of this petition. Among the purposes and powers designedly inserted in said articles is the purpose and power,
not only to "purchase" and "hold" "shares of the capital
87 stock of any other corporation or corporations," under which
said company wrongfully claims and is exercising the power to acquire by exchange and hold the stock of the Northern Pacific and the Great Northern Railway Companies, but the purpose and power, while owner thereof, "to exercise all the rights, powers, and privileges of ownership;" that is, to vote such stock, collect the dividends thereon, and in all respects act as a stockholder of such railway companies; and the purpose and power "to aid in any manner any corporation * * * of which any bonds * * * or stock are held * * * and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such bonds * * * or stock," meaning thereby to do whatever it may deem necessary to aid in any manner the Northern Pacific and the Great Northern Railway Companies, or to preserve or enhance the value of their stocks or bonds.

VIII.

In further pursuance of the unlawful combination or conspiracy aforesaid, and solely as an instrumentality through which to effect the purposes thereof, on or about the 14th day of November, 1901, the defendant The Northern Securities Company was organized by the election of a board of directors and the selection of a president and other officers, the defendant James J. Hill, the president and controlling power in the management of the defendant The Great Northern Railway Company, being chosen a director and president

thereof; and thereupon, in further pursuance of the unlawful combination or conspiracy aforesaid, the defendants James J. Hill and his associate stockholders of the defendant The Great Northern Railway Company assigned and transferred to the defendant The Northern Securities Company a large amount of the capital stock of the Great Northern Railway Company, the exact amount being unknown to complainant, but constituting a controlling interest therein, and complainant believes a majority thereof, upon the agreed basis of exchange of $180, par value, of the capital stock of the said Northern Securities Company for each share of the capital stock of the Great Northern Railway Company; and the defendants J. Pierpont Morgan and his associate stockholders of the Northern Pacific Railway Company assigned and transferred to the defendant
The Northern Securities Company a large majority of the
88 capital stock of the defendant The Northern Pacific Railway
Company, the exact amount being unknown to complainant, upon the agreed basis of exchange of $115, par value, of the capital stock of the said Northern Securities Company for each share of the capital stock of the Northern Pacific Railway Company; and thereafter, in further pursuance of the unlawful combination or conspiracy aforesaid, the defendant The Northern Securities Company offered to the stockholders of the defendant railway companies to issue and exchange its capital stock for the capital stock of such railway companies, upon the basis of exchange aforesaid, no other consideration being required. In further pursuance of the unlawful combination or conspiracy aforesaid the defendant The Northern Securities Company has acquired an additional amount of the stock of the defendant railway companies, issuing in lieu thereof its own stock upon the basis of exchange aforesaid, and is now holding, as owner and proprietor, substantially all of the capital stock of the Northern Pacific Railway Company, and, as complainant believes and charges, a majority of the capital stock of the Great Northern Railway Company, but if not a majority, at least a controlling interest therein, and is voting the same and is collecting the dividends thereon, and in all respects is acting as the owner thereof in the organization, management, and operation of said railway companies, and in the receipt and control of their earnings, and will continue to do so, unless restrained by the order of this court. By reason whereof a virtual consolidation under one ownership and source of control of the Great Northern and Northern Pacific Railway systems has been effected, a combination or conspiracy in restraint of the trade or commerce among the several States and with foreign nations formerly carried on by the defendant railway companies independently and in free competition one with the other has been formed and is in operation, and the defendants are thereby attempting to monopolize, and have monopolized, such interstate and foreign trade or commerce, to the great and irreparable damage of the people of the United States, in derogation of their common rights, and in violation of the act of Congress of July 2, 1890, entitled "An

act to protect trade and commerc- against unlawful r-straints and monopolies."

89 IX.

If the defendant The Northern Securities Company has not acquired a large majority of the capital stock of the defendant The Great Northern Railway Company, it is because the individual defendants named, and their associates in the combination or conspiracy charged in this petition, or some of them, since it became apparent that the legality of their corporate device for the merger of the stock of competing railway companies, through the instrumentality of a central or holding corporation, would be assailed in the courts, have purposely withheld, or caused to be withheld, a large amount of the capital stock of said railway company from transfer for the stock of the Northern Securities Company, and have purposely discouraged and prevented the transfer and exchange of such stock for the stock of the Northern Securities Company, all for the purpose of concealing the real scope and object of the unlawful combination or conspiracy aforesaid, and of deceiving and misleading the State and Federal authorities, and of furnishing a ground for the defense that the Northern Securities Company does not hold a clear majority of the stock of the Great Northern Railway Company. The complainant avers that such stock, so withheld or not transferred to the Northern Securities Company, is now in the hands of some person or persons (unknown to the complainant) friendly to and under the influence of the individual defendants named and their associates aforesaid, or some of them, and will either not be voted, or be voted in harmony with the Great Northern stock held by the Northern Securities Company, until the question of the legality of this corporate device for merging competing railway lines shall be finally and judicially determined, when such stock will either be turned over to the Northern Securities Company or continue to be held and voted outside said company but in harmony with the Great Northern stock held and voted by it, as may at the time seem advisable.

X.

In further pursuance of the unlawful combination or conspiracy aforesaid, the Northern Securities Company (subject, it may be, to the condition stated in the next preceding paragraph) is
90 about to and will, unless restrained by the order of this court, receive and acquire, and hereafter hold and control as owner and proprietor, substantially all of the capital stock of the defendant railway companies, issuing in lieu thereof its own capital stock to the full extent of the authorized issue, of which, upon the basis of exchange aforesaid, the former stockholders of the Great Northern Railway Company have received or will receive and hold about 55 per cent. thereof, the balance going to the former stockholders of the Northern Pacific Railway Company.

XI.

No consideration whatever has existed, or will exist, for the transfer as aforesaid of the stock of the defendant railway companies from their stockholders to the Northern Securities Company, other than the issue of the stock of the Northern Securities Company to them in exchange therefor, for the purpose, after the manner, and upon the basis aforesaid.

The defendant, The Northern Securities Company, was not organized in good faith to purchase and pay for the stocks of the Great Northern and the Northern Pacific Railway Companies. It was organized solely to incorporate the pooling of the stocks of said companies and to carry into effect the unlawful combination or conspiracy aforesaid. The Northern Securities Company is a mere depositary, custodian, holder, and trustee of the stocks of the Great Northern and the Northern Pacific Railway Companies, and its shares of stock are but beneficial certificates issued against said railroad stocks to designate the interest of the holders in the pool. The Northern Securities Company does not have and never had any capital sufficient to warrant such a stupendous operation. Its subscribed capital was but $30,000, and its authorized capital stock of $400,000,000 is just sufficient, when all issued, to represent and cover the exchange value of substantially the entire stock of the Great Northern and Northern Pacific Railway Companies, upon the basis and at the rate agreed upon, which is about $122,000,000 in excess of the combined capital stock of the two railway companies taken at par.

XII.

If the Government fails to prevent the carrying out of the combination or conspiracy aforesaid, and the defendant, The
91 Northern Securities Company, is permitted to receive and hold and act as owner of the stock of the Northern Pacific and Great Northern Railway Companies as aforesaid, not only will a virtual consolidation of two competing transcontinental lines, with the practical pooling of their earnings, be affected, and a monopoly of the interstate and foreign commerce formerly carried on by them as competitors be created, and all effective competition between such lines in the carrying of interstate and foreign traffic be destroyed, but thereafter, to all desiring to use it, an available method will be presented, whereby, through the corporate scheme or device aforesaid, the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," may be circumvented and set at naught, and all transcontinental lines, indeed the entire railway systems of the country, may be absorbed, merged, and consolidated, thus placing the public at the absolute mercy of the holding corporation.

XIII.

In furtherance of the purpose and object of the unlawful combination or conspiracy aforesaid to monopolize or attempt to monopolize the trade or commerce among the several States, and between such States and foreign countries, formerly carried on in free competition by the defendants, The Northern Pacific and Great Northern Railway Companies, and to place a restraint thereon, the individual defendants named and their associate stockholders of the defendant railway companies, have combined or conspired with one another and with other persons (whose names are unknown to the complainant, but whom it prays to have made parties to this action when ascertained) to use and employ, in addition to the corporate scheme or device aforesaid, and in aid thereof, various other schemes, devices, and instrumentalities, the precise details of which are at present unknown to the complainant but will be laid before the court when ascertained, by means of which, unless prevented by the order of this court, the object and purpose of the unlawful combination or conspiracy aforesaid may and will be accomplished.

Prayer.

In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States
92 of America prays your honors to order, adjudge, and decree that the combination or conspiracy hereinbefore described is unlawful, and that all acts done or to be done in carrying it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants and each and every one of them, and their officers, directors, stockholders, agents, and servants, and each and every one of them, be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the same, and, in addition, that the several defendants be respectively enjoined as follows:

First. That the defendant, The Northern Securities Company, its stockholders, officers, directors, executive committee, and its agents and servants, and each and every one of them, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company or the Great Northern Railway Company; and that a mandatory injunction may issue requiring the Northern Securities Company to recall and cancel any certificates of stock issued by it in purchase of or in exchange for any of the shares of the capital stock of either of said railway companies, surrendering in return therefor to the holders thereof the certificates of

stock in the respective railway companies in lieu of which they were issued.

Second. That the defendant, The Northern Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to said company or its assigns, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by such company of such stock, unless authorized by this court.

Third. That the defendant, The Great Northern Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from
93 in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to said company or its assigns, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by such company of such stock unless authorized by this court.

Fourth. That the individual defendants named, and their associate stockholders, and each and every stockholder of either of said railway companies who has exchanged his stock therein for the stock of the Northern Securities Company, be each, respectively, perpetually enjoined from in any manner holding, voting or acting as the owner of any of the stock of the Northern Securities Company, issued in exchange for the stock of either of the said railway companies, unless authorized by this court; and that a mandatory injunction may issue requiring each of the said defendants to surrender any stock of the Northern Securities Company so acquired and held by him, and accept therefor the stock of the defendant railway company in exchange for which the same was issued.

Fifth. That the individual defendants named, and their associate stockholders, and each and every person combining or conspiring with them, as charged in paragraph XIII hereof, and their trustees, agents, and assigns, present or future, and each and every one of them, be perpetually enjoined from doing any and every act or thing mentioned in said paragraph, or in furtherance of the combination or conspiracy described therein, or intended or tending to place the capital stock of the defendant railway companies, or the competing railway systems operated by them, or the competitive interstate or foreign trade or commerce carried on by them, under the control, legal or practical, of the defendant, The Northern Securities Company, or of any person or persons, or association or corporation, acting for or in lieu of said company, in the carrying out of the unlawful combination or conspiracy described in said paragraph.

The United States prays for such other and further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America
94 may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna directed to the said defendants, The Northern Securities Company, The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, and John S. Kennedy, and their associate stockholders of the Great Northern Railway Company, as their names may become known to complainant and the court be advised thereof, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, and their associate stockholders of the Northern Pacific Railway Company, as their names may become known to complainant and the court be advised thereof, and the persons referred to in paragraph XIII hereof, as their names may become known to complainant and the court be advised thereof, and to each of them, commanding them, and each of them, to appear herein and answer (but not under oath) the allegations contained in the foregoing petition, and abide by and perform such order or decree as the court may make in the premises; and that, pending the final hearing of this case, a temporary restraining order may issue enjoining the defendants and their associates, and each of them, and their stockholders, directors, officers, agents, and servants, as hereinbefore prayed.

MILTON D. PURDY,
Attorney of the United States
for the District of Minnesota.
PHILANDER C. KNOX,
Attorney-General of the United States.
JOHN K. RICHARDS,
Solicitor-General of the United States.

UNITED STATES OF AMERICA,
District of Minnesota, Third Division, } ss:

Milton D. Purdy, being duly sworn, says that he is the United States attorney for the district of Minnesota, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes them to be true. He further states that
95 he is authorized to sign the said bill of complaint for The United States of America, the complainant therein by the Attorney-General of the United States.

MILTON D. PURDY,
Attorney of the United States
for the District of Minnesota.

Subscribed in my presence and sworn to before me this 10th day of March, A. D. 1902.

[SEAL OF COURT.] HENRY D. LANG,
Clerk of the United States Circuit Court
for the District of Minnesota.

Certificate of Incorporation of Northern Securities Company.

STATE OF NEW JERSEY, ss:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the act of the legislature of the State of New Jersey entitled "An act concerning corporations" (revision of 1896), and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First. The name of the corporation is Northern Securities Company.

Second. The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the city of Hoboken, county of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Company. Such office is to be the registered office of the corporation.

Third. The objects for which the corporation is formed are:

(1.) To acquire by purchase, subscription, or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country.

(2.) To purchase, hold, sell, assign, transfer, mortgage,
96 pledge, or otherwise dispose of any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country, and while owner thereof to exercise all the rights, powers, and privileges of ownership.

(3.) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country, and while owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

(4.) To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

(5.) To acquire, own, and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property out of this State.

Fourth. The total authorized capital stock of the corporation is four hundred million dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth. The names and post-office addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business), are as follows:

97 Name and post-office address.	Number of shares.
George F. Baker, Jr., 258 Madison avenue, New York, N. Y.	100
Abram M. Hyatt, 214 Allen avenue, Allenhurst, N. J.....	100
Richard Trimble, 53 East Twenty-fifth street, New York, N. Y.....	100

Sixth. The duration of the corporation shall be perpetual.

Seventh. The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year, the directors of the second class for a term of two years, and the directors of the third class for a term of three years; and at each annual election the successors of the class of directors whose term shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification, or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may

elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of
98 the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the act of the legislature of the State of New Jersey passed March 22, 1901, amending the seventeenth section of the act concerning corporations (revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employee of the corporation may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum, and to such extent as shall be provided in the by-laws such committee shall have and may exercise all or any of the powers of board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries, and, to the extent provided in the by-laws, the persons so appointed, respectively, shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The board of directors shall have power from time to time to fix and determine and to vary the amount of the working capital of the corporation; to determine whether any, and if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends, and to direct and to determine the use and disposition of any surplus
99 or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the

corporation to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

The board of directors from time to time shall determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation except as conferred by statute of the State of New Jersey, or authorized by the board of directors or by a resolution of the stockholders.

The board of directors may make by-laws, and from time to time may alter, amend, or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

In witness whereof we have hereunto set our hands and seals the 12th day of November, 1901.

GEO. F. BAKER, JR. [L. S.]
ABRAM M. HYATT. [L. S.]
RICHARD TRIMBLE. [L. S.]

Signed, sealed and delivered in the presence of—
GEO. HOLMES.

STATE OF NEW YORK, County of New York, Manhattan, } ss:

Be it remembered, that on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Baker, Junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and I having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

(Endorsed.)

"Received in the Hudson Co., N. J., clerk's office, Nov. 15, A. D. 1901, and recorded in Clerk's Record No. —, on page —.
"MAURICE J. STACK, Clerk."

"Filed Nov. 13, 1901.
"GEORGE WURTS,
"Secretary of State."

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHern Railway Company, The Northern Pacific Railway Company, and Others, Defendants.

Præcipe for Chancery Subpœna.

To the clerk of above-named court:

Please issue chancery subpœna in the above-entitled case.
Dated March 10, 1902.

M. D. PURDY,
Attorney for the United States.

(Indorsed:) United States circuit court, district of Minnesota. 3rd division. The United States *vs.* Northern Securities Co. and others. Præcipe for chancery subpœna. Ent'd C. R. "B," page 84. Filed March 10, 1902. Henry D. Lang, clerk.

101 United States Circuit Court, District of Minnesota, Chancery Rule Register.

THE UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY and Others.

C. Equity. No. 789. March 10, 1902.

The complainant having filed a bill of complaint in this cause on application of Milton D. Purdy, U. S. dist. att'y, dist. of Minn., P. C. Knox, Att'y Gen'l, and J. K. Richards, Sol. Gen'l of U. S., solicitors, ordered that a writ of subpœna issue as herein prayed.

HENRY D. LANG, Clerk.

(C. R., "B," page 84.)

(Original.)

UNITED STATES OF AMERICA,
District of Minnesota, Third Division.

The President of the United States of America to Northern Securities Company, Great Northern Railway Company, Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of April next, at the

city of St. Paul, then and there to answer the bill of complaint of the United States of America, filed against you on the 10th day of March, A. D. 1902; hence, fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 10th day of March, 1902.

Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, Clerk.

102 MEMORANDUM.—The above-named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

HENRY D. LANG, Clerk.

Milton D. Purdy, attorney of the U. S. for the district of Minnesota; Philander C. Knox, Attorney-General of the U. S.; John K. Richards, Solicitor-General of the U. S., complainant's solicitors.

(Endorsed:) Chancery subpœna. Returnable to April rules, 1902. Filed March 10th, 1902. Henry D. Lang, clerk.

In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
v.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, and Others, Defendants.

To Henry D. Lang, Esq., clerk of said court:

You will please enter the appearance, in this cause, of the defendants, The Northern Securities Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, and George F. Baker, by the undersigned, their solicitors and counsel.

Yours respectfully, JOHN W. GRIGGS.
GEORGE B. YOUNG.

Dated St. Paul, Minn., April 4, 1902.

(Endorsed:) Præcipe for appearance for certain defendant-. Ent'd C. R. "B," page 85. Filed April 7th, 1902. Henry D. Lang, clerk.

103 United States Circuit Court, District of Minnesota, Chancery-Rule Register.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, GREAT Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } C. Equity. No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendants, The Northern Securities Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, and George F. Baker, by John W. Griggs and George B. Young, their solicitors, be, and the same hereby is entered.

HENRY D. LANG, Clerk.

(C. R. "B," page 85.)

Circuit Court of the United States, District of Minnesota, Third Division.

UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY, GREAT NORTHERN Railway Company, *et al.* } Appearance.

The clerk will enter my appearance for the defendant, Great Northern Railway Company.

M. D. GROVER,
St. Paul, Minn.

(Indorsed:) Appearance of M. D. Grover for Great Northern Railway Company. Ent. C. R. "B," page 86. Filed April 7th, 1902. Henry D. Lang, clerk.

104 United States of America, District of Minnesota, Chancery-Rule Register.

APRIL 7TH, 1902.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, GREAT Northern Railway Company, *et al.* } C. Equity. No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendant Great Northern Railway Com.

pany, one of the above-named defendants, by M. D. Grover, its solicitor, be, and the same hereby is, entered.

HENRY D. LANG, Clerk.

(C. R. "B," page 86.)

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } Appearance.

The clerk will enter my appearance for The Northern Pacific Railway Company, one of the defendants.

C. W. BUNN,
St. Paul, Minn.

(Endorsed:) Appearance of C. W. Bunn for The Northern Pacific Railway Co., defendant. Filed April 7th, 1902. C. R. "B," page 85. Henry D. Lang, clerk.

105 United States Circuit Court, District of Minnesota, Chancery Rule Register.

APRIL 7TH, 1902.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } C. Equity. No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendant, The Northern Pacific Railway Company, by C. W. Bunn, its solicitor, be, and the same hereby is, entered.

HENRY D. LANG, Clerk.

(C. R. "B," page 85.)

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } Appearance.

The clerk will enter my appearance for the defendants, J. Pierpont Morgan and Robert Bacon.

FRANCIS LYNDE STETSON,
15 Broad St., New York.

(Endorsed:) Appearance of Francis Lynde Stetson for J. Pierpont Morgan and Robert Bacon, defendants. Ent. C. R. "B," page 86. Filed April 7th, 1902. Henry D. Lang, clerk.

106 United States Circuit Court, District of Minnesota, Chancery Rule Register.

APRIL 7TH, 1902.

THE UNITED STATES OF AMERICA
vs.
THE NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } C. Equity. No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of J. Pierpont Morgan and Robert Bacon, two of the defendants in this cause, by Francis Lynde Stetson, their solicitor, be, and the same hereby is, entered.

HENRY D. LANG, Clerk.

(C. R. "B," page 86.)

UNITED STATES OF AMERICA,
District of Minnesota, Third Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, *et al.*, Defendants.

To the clerk of the above-named court:

You will please enter my appearance in the above-entitled suit as solicitor for Daniel S. Lamont, one of the defendants.

DAVID WILCOX.

(Endorsed :) Appearance of David Wilcox. Ent. C. R. "B," page 86. Filed April 7th, 1902. Henry D. Lang, clerk.

107 United States Circuit Court, District of Minnesota, Chancery Rule Register.

APRIL 7TH, 1902.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE NORTHERN SECURITIES COMPANY, Northern Pacific Railway Company, Great Northern Railway Company, *et al.*, Defendants. } C. Equity. No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendant Daniel S. Lamont, one of the defendants, by David Wilcox, his solicitor, be and the same hereby is entered.

HENRY D. LANG, Clerk.

(C. R. "B," page 86.)

Entered 789, C. E.

Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainants,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHern Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

Answer of the Defendant Northern Securities Company.

John W. Griggs, George B. Young, solicitors for the defendant.

(Endorsed :) Filed May 5th, 1902. Henry D. Lang, clerk.

108 In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainants,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, and Others, Defendants.

The Answer of the Northern Securities Company to the Petition of the United States of America.

I.

This defendant admits and avers that the defendant railway companies were, at the time mentioned in the petition, and are now

common carriers employed in transportation of freight and passengers within and among those States of the United States in which the railways operated by them are situated, and not further or otherwise, but were and are engaged in commerce among the several States and with foreign nations.

II.

This defendant admits that, on and prior to November 13, 1901, the capital stock of the defendant railway companies was owned and controlled by their respective shareholders, and it avers, on information and belief, that the outstanding capital stock of the Great Northern Railway Company was owned by more than eighteen hundred (1,800) separate owners, and the outstanding capital stock of the Northern Pacific Railway Company was owned by more than thirty-five hundred (3,500) separate owners; and that among the shareholders of the Great Northern Railway Company (hereinafter called the Great Northern Company) were the defendants Hill, Clough, James, Morgan, and Kennedy; and that among the shareholders of the Northern Pacific Railway Company (hereinafter called the Northern Pacific Company) were the defendants Morgan, Bacon, Baker, Hill, Kennedy, James, and Lamont. It avers that the persons named and meant to be designated in the peti-
109 tion as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Great Northern Company, did not at any time, nor in any manner, own or control a majority of said stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all time separate and individual, and not in association with each other, or with any other person or persons, and neither of them was under any obligation or promise to any of the others, or to any other person, to hold, use, or vote his stock otherwise than as he should, from time to time, determine to be best for his own individual interest. The persons named and meant to be designated in the petition as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Northern Pacific Company, did not, at the date named, nor at any time, or in any manner, own or control a majority of such stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and neither of them had any control of the holdings of the other, or of any other person or persons, and neither of them was under any promise or obligation to the other, or to any person, to hold, use, or vote his stock otherwise than as he should, from time to time, determine to be best for his own individual interest.

Except as herein admitted and averred, this defendant denies each and every allegation of subdivision II of the petition.

III.

This defendant admits that the Northern Pacific Company owned and operated a railway from Ashland, in Wisconsin, via Duluth, and from St. Paul, across Minnesota, North Dakota, Montana, Idaho, and Washington, and into Oregon, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle in Washington, and to Portland in Oregon; and that the Great Northern Company operated lines of railway extending from St. Paul, in the State of Minnesota, across said State and North Dakota, Montana, Idaho, and Washington to Everett and Seattle in Washington, passing through Spokane in that State.

It admits that the said lines so operated by said companies
110 connected with other railway lines, and that, either directly or by means of such other railway lines, they connected with lines of steamships on the Great Lakes and the ocean; and that the mileage operated by said companies aggregated about fifty-five hundred (5,500) miles for the Northern Pacific Company and about forty-one hundred and twenty-eight (4,128) miles for the Great Northern Company.

It denies that the lines operated by said companies are parallel or competing, except for the short distances and to the limited extent hereinafter mentioned, and denies that said companies were engaged in active competition with each other, except in the manner and to the extent hereinafter stated.

Except as hereinabove and hereinafter stated, it denies each and every allegation in subdivision III of said petition.

IV.

This defendant admits and avers that prior to 1893 those portions, and those portions only, of the lines of the Northern Pacific Company which had been built and were operated by virtue of the act of Congress incorporating the Northern Pacific Railroad Company, approved July 2, 1864, were owned and operated by the last-named company, and that in the year 1893 that company became insolvent and its lines passed into the hands of receivers appointed by various Federal courts.

It admits that while in this condition a contract was made, as set forth in the report of the Pearsall case, referred to in the petition. It avers that said contract was made under and in conformity with the provisions of the act of incorporation of the Great Northern Company, and that the only objection made to the validity of the contract was that the provisions in said charter under which it was made had been repealed by subsequent general laws of the State. It denies that the case, or that the decision therein, is correctly stated in the petition. And it avers that neither the said contract nor the issues raised and decided in the said case have any relevancy to the matters in controversy in this case.

V.

This defendant admits and avers that in the winter and spring of 1901 the defendant railway companies, for the purpose of
111 promoting their several interests and the interests of the country traversed by their lines and by those of the Chicago, Burlington and Quincy Railroad Company, purchased in equal parts the stock of the last-named company to the amount and at the price and upon the terms of payment stated in the petition. It admits that the lines operated by the Chicago, Burlington and Quincy Railroad Company and its connections are substantially as stated in the petition. It denies that what is called in the petition the Burlington system was or is parallel to or competing with what is therein called the Union Pacific system, but admits that some of the lines of each system compete with some lines of the other.

It denies that said purchase of stock was made in contemplation of the ultimate placing of the Great Northern and Northern Pacific systems under a common source of control, or that it was made for any other motive or with any other purpose than as hereinafter stated.

Except as herein admitted, it denies each and every allegation in subdivision V of the petition.

VI.

This defendant denies that prior to its organization the defendants James J. Hill or J. Pierpont Morgan, or said Hill and Morgan, or any persons associated with them, or either of them, owned or controlled a majority of, or held a controlling interest in, the stock of either of said railway companies.

It denies that said persons, or that any of the persons concerned in its organization, contrived or intended any of the things alleged in subdivision VI of the petition or entered into any agreement or conspiracy to do any of the things charged in said subdivision.

It admits and avers that said James J. Hill and other holders (not exceeding ten in number) of the stock of the Great Northern Company, but not including the defendants Morgan, Bacon, or Lamont, did plan its organization with an authorized capital of four hundred million dollars ($400,000,000) for the purposes, and those only, set forth in its certificate of incorporation. It denies that James J. Hill and J. P. Morgan agreed between themselves, or with other stockholders of either of the defendant railway companies, or
112 with either of said railway companies, or with anyone whomsoever, that a controlling interest of the stock of either of said railway companies should be turned over or transferred to this defendant, whether in exchange for its stock or otherwise.

It denies that any of the matters stated in said subdivision VI of the petition were contemplated or intended, or have resulted, or will result, from its formation and operation. And it denies the allega-

tion that it is the duty of the directors of said railway companies to pursue a policy which will promote the interest of both systems at the expense of the public.

It alleges that the motives and intentions of the persons so forming this defendant were and are such, and such only, as are in this answer stated, and it denies each and every allegation in subdivision VI of the petition not herein expressly admitted or specifically denied.

VII.

This defendant admits its formation under the laws of New Jersey with the articles, a copy of which is attached to the petition, and that the provisions of said articles were designedly inserted therein and were fully authorized by the general corporation laws of that State. And it says that the exercise of the powers of a stockholder provided for in said articles was not, as wrongly stated in the petition, confined to the stock of the defendant railway companies which this defendant might hold. It avers that the clause in said articles, partially quoted in paragraph VII of the petition, was not intended to, and does not, enlarge its powers, as the same are set forth in the preceding clauses of said articles, but makes clear its power to do such acts as making or procuring advances of money to any corporation whose securities are held by it, the indorsement or guaranty by it of the obligation, of such corporation, becoming surety therefor, or in any lawful manner using its name or resources in aid of such corporation.

VIII.

This defendant admits and avers that on or about the 14th day of November, 1901, its directors and officers were elected, and among them the defendant James J. Hill as a director and president, but denies that he was or is the controlling power in the management of the Great Northern Company.

113 It admits and avers that thereafter the defendant James J. Hill and other stockholders of the Great Northern Company, severally and each acting for himself alone, and without any agreement to that effect with any other stockholder, sold to this defendant a large amount of Great Northern stock at one hundred and eighty dollars ($180) per share in exchange for stock of this defendant at par, but it avers that the stock so sold was not within twenty-six million dollars ($26,000,000) of a majority of the stock of the Great Northern Company.

It admits and avers that thereafter and about November 22, 1901, it offered like terms of purchase to the other shareholders of the Great Northern Company, the offer to hold good for sixty days from its date, and that many of the shareholders of that company, each acting for himself alone, accepted such offer and made such sale.

It admits and avers that the defendant J. P. Morgan and other shareholders of the Northern Pacific Company sold to the defend-

ant a majority of the stock of the Northern Pacific Company; and that this defendant has received such dividends as have been paid on the shares held by it, in the same manner and at the same rate as other shareholders; but it denies that it has acted, whether as owner of stock or otherwise, in the management or direction of either of said railway companies or in receipt or control of the earnings of either of them, and it avers that no change whatever has taken place in the management of the said railway companies, or either of them, and each of them is managed by the same board of directors and officers as existed before the organization of this defendant.

It denies that any of the things done by the defendants James J. Hill and J. Pierpont Morgan, or by either of them, or by this defendant or its promoters, directors, officers, or stockholders, or any of them, were done in pursuance of the pretended combination or conspiracy alleged in subdivision VIII of the petition, or as an instrumentality to effect the purposes thereof, and it denies that by reason of the matters or any of them in the petition alleged a virtual or any consolidation of said defendant railway companies or their business has been effected or intended; and it denies any conspiracy or combination in restraint of trade or commerce among the States, or with foreign nations, or that the defendants or any of them
114 are attempting or intending to monopolize or restrain any such trade or commerce.

IX.

It denies each and every allegation in subdivision IX of the petition.

X.

This defendant says that it does not know and can not set forth how much additional stock of either defendant railway company it is likely to acquire, since each acquisition of shares by it depends, among other contingencies, on the willingness of the holders of the said stock to sell it upon terms which this defendant may be willing to accept.

XI.

This defendant says it has bought and paid for and has caused to be transferred to it upon the records of the Great Northern Company, in accordance with the by-laws of that company, about five-twelfths (5 / 12) of the shares of that company's stock; and has also negotiated for, but has not yet caused to be presented to the Great Northern Company for transfer upon its records, other shares of the stock of that company aggregating about four-twelfths (4 / 12) of the total amount of its stock, but has not acquired a right to vote as stockholder of the Great Northern Company on stock not so transferred. This defendant, in acquiring shares of the Great Northern Company and of the Northern Pacific Company, dealt solely with

the separate owners of the said shares in their respective individual capacities. It has no knowledge of any agreement, promise, or understanding between any of the holders of said stock concerning the sale thereof to it, and it denies that any such agreement, promise, or understanding was ever made. All the sales and transfers of the said stock to this defendant were absolute and without any reservation of any right or interest in any share thereof to the seller or to any other person.

This defendant has not paid for all the stock of the Great Northern Company and of the Northern Pacific Company acquired by it in shares of its own stock, but, on the contrary, has expended upward of forty million dollars ($40,000,000) cash in the making
115 of such purchases. Every share of the Great Northern Company and the Northern Pacific Company acquired by this defendant has been, and so long as it remains the property of this defendant will continue to be, held and owned by it in its own right, and not under any agreement, promise, or understanding on its part, or on the part of its stockholders or officers, that the same shall be held, owned, or kept by it for any period of time whatever, or under any agreement that in any manner restricts its right and power immediately to sell or otherwise dispose of the same, or that restricts or controls to any extent any use of the same, which might lawfully be exercised by any other owner of said stocks. There has been and is no agreement, promise, or understanding between any of the holders of said stock so acquired by this defendant, or between any of them and any other person or corporation, that any of said shares should at any time be held, used, or voted by this defendant for the purpose of combining or consolidating or placing under one common management or control the railways of the Great Northern Company and of the Northern Pacific Company, or the business thereof, or for the purpose of monopolizing or restraining traffic or competition between the said railways. Many stockholders of the said companies have not sold, and may never sell, their shares to this defendant; and the said railway companies have not nor have any of the directors of either of them, by any act, formal or informal, or by suggestion, ever solicited any of their respective shareholders to sell their shares to this defendant. This defendant was organized in good faith, and it denies all the allegations in subdivision XI of the petition.

XII.

This defendant denies each and every allegation in subdivision XII of the petition.

XIII.

This defendant denies each and every allegation in subdivision XIII of the petition.

Second.

Further answering the petition, this defendant, upon information
and belief, says that the facts as to the purchase of the share
116 of the Chicago, Burlington and Quincy Railroad Company
(hereinafter called the Burlington Company) and the planning and forming of this defendant and the motives, intentions, and purposes of the persons and corporations concerned in these enterprises, or either of them, were not as erroneously stated in the petition, but were and are as follows:

I.

When projecting the line of the Great Northern Company to the Pacific coast, that company and its directors contemplated the necessity of creating for the line not merely State and interstate, but an international commerce. Nearly all of the country traversed or reached by the line was then but sparsely settled or not settled at all. It was principally agricultural, grazing, or timber land, with mineral deposits in the mountain ranges believed to be large and valuable, but not developed or explored. Whatever commodities the region might furnish for carriage would be raw material, of great weight and bulk in proportion to its value, which would not bear transportation to market except at a low mileage rate, such as could be made possible only by every practicable reduction in the cost of transportation. The available market for all such products was far from the places of production.

In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for which is in the prairie States of the Mississippi valley east of the Rocky mountains; but the lumber and shingles from the Pacific coast would not bear the cost of transportation to those States if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. And the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line, or reached by it, could not furnish a market for commodities enough to load the returning cars; the result being that unless the company could secure traffic for carriage beyond the Pacific coast no great traffic either way could exist or be created.

To meet these conditions the Great Northern Company not only went to great additional expense in the construction of its line to
obtain gradients lower than those of any other line to the
117 Pacific coast, but also made great efforts to create and increase in the countries of eastern Asia a demand for the products of this country; and soon after the completion of its railway in 1893 it induced a Japanese company to run a line of steamships, connecting with its railway, on the route between Seattle and ports of Japan, China, and Russian Siberia, and succeeded in creating and has since been actively engaged in building up a commerce in which

the flour manufactured along its line, cotton (both raw and manufactured), iron and steel (especially steel rails and plates), machinery, and such other manufactures of this country as a market could be found or made for in eastern Asia, have been carried to oriental ports, and return cargoes of such oriental products as are consumed in this country have been brought back. A large west-bound, as well as an increased east-bound, traffic has thus been secured by the company, enabling it to make such rates on lumber and other products of the country served by it as permit them to be shipped to eastern markets with a profit to the shippers.

One year before the Burlington purchase, this oriental traffic had reached such proportions that the Great Northern Company caused to be begun the construction of steamships to run from Seattle to ports in Japan, China, and the Philippines, which, from their great carrying capacity (being the largest in the world), will be able to carry at very low rates (if full cargoes can be secured), and thus enable the company to move the largest volume of west-bound traffic, (and also of east-bound traffic) at the lowest cost.

In the interstate and international commerce which the Great Northern Company has thus built up, it competes both in this country and on the ocean with the other transcontinental lines (including the Canadian Pacific), and at the oriental ports it competes for commerce of the world. Its rates are and must be made in competition with the rates of ocean carriers and by way of the Suez canal.

The policy thus followed by the Great Northern Company in building up an international, and thereby interstate, commerce has been followed by the Northern Pacific Company since its reorganization in 1896.

In creating and maintaining this competitive interstate and international commerce both the Great Northern Company and
118 the Northern Pacific Company were hampered and placed at a disadvantage with the other transcontinental railways, as well as with European competitors, by the want of sufficient direct connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distribution from which their traffic must be supplied. For many months before the purchase of the Burlington shares they had considered the best means of getting closer to such markets and sources of supply. The lines of the Burlington, better than those of any other company, fulfilled the requirements of both the Great Northern Company and the Northern Pacific Company in respect of markets for east-bound and freight for west-bound traffic. The Burlington lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas, and Colorado, which afford the best markets for the lumber of the Pacific coast. They reach Denver, Kansas City, Omaha, and Aurora, where are located the principal smelters of silver-lead ores, such as are mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City, and Chicago, where are the

great packing houses and the great markets for the cattle and sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon, and Washington.

They reach St. Louis and Kansas City, connecting there with lines traversing the cotton States, from which come raw and manufactured cotton required for shipment to China and Japan.

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery, and other manufactured articles that find a market in Japan and China.

The Burlington line southward from Minneapolis and St. Paul along the Mississippi river reaches the great coal deposits of southern Illinois, the largest west of Pennsylvania and West Virginia; and its light gradients and consequent low cost of transportation make it possible to supply such coal to points on the lines of each defendant railway company east of the Missouri river, relieving the people and the railways of that territory from entire dependence upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain.

The price paid for said Burlington stock was lower per
119 mile of main track covered by the stock than that for which the stock of any other large and well established system in the same general territory could then have been bought.

The purchase of the Burlington stock by the Northern Pacific and Great Northern Companies in equal parts served each company as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

The Great Northern and Northern Pacific Companies therefore each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching the best markets for the products of the territory along their lines, and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the regions traversed or reached by the Great Northern and Northern Pacific lines, and by their connecting lines of shipping on the Pacific coast. These connections and such interchange of traffic were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each company in the competition with the more southerly lines to the Pacific coast, with the Canadian Pacific railway, and with European carriers, for the trade and commerce of the orient.

In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, or to lessen any competition between the

purchasers. Such purchase was not intended to have, and it can not have, any such effect.

The purchase of the Burlington stock was not made in view of the formation of this defendant, but solely from the motives and with the purposes already stated.

II.

The project of forming a holding company of any kind was not the result, in any way, of the failure of the plan which was
120 defeated by the decision of the Supreme Court in the Pearsall case. There was no connection whatever between the two.

The project of a holding company which finally developed into the formation of this defendant had its inception years before that date, among several gentlemen, not exceeding ten in number, who had been large shareholders in the Great Northern Company and its predecessor, the St. Paul, Minneapolis and Manitoba Railway Company; some of them from the original organization of the latter company in 1879, and others from dates not long after that time. They have never held a majority of the stock of the Great Northern Company, but have taken an active interest in its policy and administration; have aided it when necessary in financing its operations; have acted together in promoting its interests; have, with some exceptions, served from time to time as directors and officers (Mr. Hill having been president of the successive companies since 1882); and by reason of their active interest in the company and services to it have influenced to a large degree its policy and management. As far back as 1893, most of these gentlemen being well advanced and some far advanced in years, they began to discuss together what would be the effect upon the policy which under their influence the company had pursued with great benefit to its shareholders and the public, should their holdings by death or otherwise become scattered, and by what means their holdings could be kept together, so as to secure the continuance of such policy in the management of the company. It was considered that if a company should be formed to which they might transfer their individual holdings, their shares were likely to be held together, so long as the majority in the holding company should so wish, and this would tend to give stability to the policy of the Great Northern Company, be of aid to it in financial operations, and maintain the value of their investments. These conclusions were the result of various consultations among the persons mentioned, or some of them, but no definite agreement was made for forming such a company or binding anyone to transfer his shares to it if formed.

From time to time, beginning with the reorganization of the Northern Pacific Company in 1896, Mr. Hill and said other Great Northern shareholders who had discussed with him the plan
121 of forming a holding company, had made large purchases of Northern Pacific shares, individually, each for himself, with-

out any concerted action, and solely as investments. About May 1, 1901, their aggregate holdings of the common stock of the Northern Pacific Company amounted to nearly twenty million dollars ($20,000,000) of the eighty million dollars ($80,000,000) common stock of the company, which also had a preferred stock, amounting to seventy-five million dollars ($75,000,000), with the same voting power as the common stock. At this time the firm of J. P. Morgan & Co. held about six million dollars ($6,000,000) of the common stock. In the fall of 1900 Mr. Hill and said Great Northern shareholders discussed the question of putting their holdings of Northern Pacific stock into the proposed holding company, as well as the suggestion that all the other stockholders of the Great Northern Company should be given the opportunity of selling and transferring their shares to the holding company, and that its capital stock should be made large enough to enable it to buy such holdings, though it was not known that the holders of any considerable amount of Great Northern stock, other than those above named, would desire to make such transfer.

At the time of the purchase of the Burlington shares it was not contemplated by either purchasing company or its shareholders that any alliance between the purchasing companies, or among their shareholders, was needed to preserve to each company its fair share of the advantages secured by the purchase. It was thought that the manifest interest of each company rendered any further guaranty or security needless. But pending or just after the conclusion of the negotiations for the Burlington stock, parties acting in the interest of the Union Pacific Railway system did purchase Northern Pacific shares, both common and preferred, to the amount of about seventy-eight million dollars ($78,000,000), being a clear majority of the entire capital stock of that company. The apparent intent of such purchase was to defeat and, if successful, it would have defeated, the carrying out of the purposes for which the Burlington shares had been bought by the Great Northern and Northern Pacific Companies, and the development of the interstate and international commerce of each of them, and would have subordinated the policy of each to an interest adverse to both the Great Northern and
122 Northern Pacific Companies, and to the public served by their lines.

To protect the interests of the shareholders of the Northern Pacific Company, J. P. Morgan & Co. made additional purchases of Northern Pacific common stock, which, with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about forty-two million dollars ($42,000,000), being a majority of the common stock. In view of the injury apprehended to both companies, and to their shareholders, and the better to protect their interests in the future, the Great Northern shareholders holding Northern Pacific shares, deemed it advisable that the projected holding company should have power to purchase not only their own Great

Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to said holding company, and the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic or operations of the Great Northern and Northern Pacific Companies, respectively. At this time it was not expected by any of the persons concerned that any Northern Pacific shares except the said forty-two million dollars ($42,000,000) would be acquired by the proposed holding company. The organization of such company was not dependent on any agreement that it should acquire a majority of the shares of either defendant railway company. It would have been organized if the Burlington purchase had not been made, and if its promoters had had no other shares to transfer to it than the thirty-four million dollars ($34,000,000) Great Northern stock and the twenty million dollars ($20,000,000) Northern Pacific stock held by them on May 1, 1901. It was not known that all or how many of the shareholders of either of the railway companies would be likely to transfer their shares to this defendant when formed. After its organization this defendant bought and still holds about one hundred and fifty million dollars ($150,000,000) of the stock of the Northern Pacific Company; and it has also purchased and negotiated for the purchase of the stock of the Great Northern Company, as hereinbefore stated. Neither the said persons who were concerned in the formation of this defendant, nor the
123 said persons from whom it has acquired the stocks of said railway companies, nor this defendant itself since its formation, nor its stockholders, directors, or officers, have planned or intended that the stock of said railway companies acquired by this defendant, or any part thereof, should be held, used, or voted by it, or by its officers, agents or proxies, for the purpose of combining, consolidating or placing under one common management or control the railways of the Great Northern and Northern Pacific Companies, or the business thereof; or for the purpose of monopolizing or restraining competition between the said railway companies; or for any other purpose than the election by each of said railway companies of a competent and distinct board of directors, able and intending to manage each of them independently of the other, and for the benefit of their shareholders and of the public. By the acts of the legislature of the State of Minnesota incorporating the Great Northern Railway Company, and by the acts of the legislature of the State of Wisconsin incorporating the Northern Pacific Railway Company, it is, in substance, provided that the business and affairs of each railway company shall be managed by a board of directors to be elected by the stockholders, and that all the powers of each corporation relating to said matters shall be vested in such board.

Every share of stock issued by this defendant has been issued to the persons and corporations receiving the same in good faith, for full value paid to it, either in cash or its equivalent, and in accordance with the provisions of its articles of incorporation and with the

laws of the State of New Jersey. No agreement, promise or understanding has been made between this defendant and any of its stockholders, or between its stockholders themselves or any of them, or between said stockholders or any other persons or corporations, that the stock of this defendant should be held, used, or voted other than by each stockholder, separately and individually, and in such way as he should see fit; and there has been no agreement, promise, or understanding between said stockholders themselves, or any of them or between said stockholders and any other person or corporation, that they or any of them should use, hold, or vote their stock in this defendant in association or for any common purpose or object.

124 The owners and holders of stock of this defendant are more than thirteen hundred (1,300) in number, and the ownership of the stock is being changed from day to day by sales and transfers in the usual course of dealing. The said persons who formed or were otherwise concerned in the formation of this defendant, have never, altogether, held, owned or otherwise controlled an amount of stock of the said company equal to so much as one-third of the whole amount thereof now outstanding. This defendant has no contract or obligation to purchase or acquire any shares whatever in either railway company, in addition to those which it has purchased or negotiated to purchase as above stated. Its authorized capital was fixed by persons who planned its organization to enable it to give to each stockholder in each of the defendant railway companies an opportunity to sell his stock to it, should he see fit to do so, and should this defendant desire to acquire it. The sum fixed was deemed ample by those who planned the formation of this defendant to furnish the means to pay for all such shares as would likely be acquired by it, and to leave remaining a large amount to be used for the purchase of stock in other corporations, not common carriers, which this defendant might consider beneficial to acquire. This defendant was not formed as a scheme or a device to evade the act of Congress known as the "antitrust act," or any other law whatever, but solely for the purposes hereinbefore stated.

III.

This defendant was not formed, nor did any of those concerned in its formation, nor any of those who sold their shares of stock to it, have any purpose or intention, to restrain trade or commerce, or to lessen competition between said railway companies, or to monopolize traffic in any manner whatever; nor can any such results follow from the formation or operation of this defendant. In point of fact, since the organization of this defendant rates on the defendant railway companies' lines, including rates to and from points common to both, have voluntarily been so reduced as to decrease their earnings by upwards of a million of dollars annually. For all interstate commerce on the lines of either the defendant railway companies, except traffic beginning and ending on their own lines respectively, the

rates are fixed by joint tariffs with connecting lines. In re-
125 spect to all such traffic neither of the defendant companies has ever had, or can have, any independent rate making power or control of traffic or rates. All joint tariffs with other companies to or from points common to the lines of the defendant railway companies have always been, and necessarily must be, the same, whether the traffic is carried by one or the other of said companies. The total amount of all other interstate traffic, that is, traffic between common points on the two roads, which is not competitive both as to rates and quality of service with other corriers having equal rate-making power with them, is less than 2 per cent. of the total interstate traffic of the two companies.

IV.

The sale and transfer of property, whether in the form of shares of corporate stock or otherwise, has never been adjudged to be, and is not, in violation of the act of Congress of July 2, 1890, known as the "antitrust act."

This defendant is not a railroad company, and it has no power to operate or manage railways or make or control rates of transportation, nor to monopolize or restrain traffic of any kind. So far from intending to violate any provision of said act of Congress, the persons who were concerned in organizing this defendant and those who have sold their shares to it had every reason to believe and did believe that such sales were not in any way in contravention of that act. In common with the general public, they were aware that during the eleven years since the passage of that act in many instances the stock of a competing railway company had been acquired by its competitor or the shareholders thereof, such acquisition including many of the principal railways doing business throughout the country. This has been done without objection from any branch of the Government of the United States, and has invariably proven beneficial to the railway companies concerned and to the public, and those making sales of stocks to this defendant had no reason to believe that such sales were open to any legal objection or question whatever.

V.

This defendant was not organized for the purpose of acquiring a majority of the stock of either the Great Northern or the
126 Northern Pacific Company, but merely to purchase the stock of those who wished to sell, as above stated, and was not organized for the purpose of controlling railway rates in the slightest degree, and has not had and cannot have any such effect. The transactions referred to in the petition have consisted in the organization of a lawful corporation and the purchase of property by it. All acts done in relation to the organization of this defendant and in the conduct of its business have been expressly authorized by

law, and have had no effect whatever to restrain trade or commerce among the several States or with foreign nations. If these lawful transactions should hereafter have any effect to restrain trade or commerce among the several States or with foreign nations (which is hereby denied), that effect would be merely indirect, remote, incidental, and collateral, and not intended, and as nothing compared with the great expansion of the volume of interstate and international commerce which was intended, and which this defendant believes is destined to result from the enterprise of the two railway companies, that culminated in the purchase of the Burlington stock.

And this defendant says:

1. The "antitrust act" was not intended to prevent or defeat an enterprise in aid of a great competitive interstate and international commerce merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce, trifling both as respects territory and volume.

2. Nor was the act intended to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own, and sell their stock.

3. Otherwise construed, the act would be unconstitutional, because:

The power to regulate commerce with foreign nations and among the States does not give Congress the power to regulate any of the matters above mentioned in respect to corporations created by the States; and because

Persons may not be deprived of their property without due process of law, by taking from them the right to sell it as their interest may suggest.

127 VI.

There is a defect of necessary parties defendant, because, as already set forth, the persons who made sales of stock of the said railway companies to this defendant were numerous, exceeding more than 1,300 in number, and few of them had any connection whatever in the planning or forming of this defendant, and in their absence from this litigation no decree can be made affecting their rights in the premises.

VII.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant;

all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHERN SECURITIES COMPANY,
By JOHN W. GRIGGS,
GEO. B. YOUNG,
Solicitors and Counsel.

128 Entered 789, C. E.

Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainants,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

Answer of the Defendants James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, and George F. Baker.

George B. Young, solicitor for the defendants.

(Endorsed:) Filed May 5th, 1902. Henry D. Lang, clerk.

In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainants,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants.

The Answer of Defendants James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, and George F. Baker to the Petition of the United States of America.

I.

They admit and aver that the defendant railway companies were at the time mentioned in the petition and are now common carriers employed in transportation of freight and passengers within and among those States of the United States in which the railways operated by them are situated, and not further or otherwise, but were and are engaged in commerce among the several States and with foreign nations.

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II.

They admit and aver that prior to November 13, 1901, the outstanding capital stock of the Great Northern Railway Company was owned by more than eighteen hundred (1,800) separate owners, and the outstanding capital stock of the Northern Pacific Railway Company was owned by more than thirty-five hundred (3,500) separate owners; and that among the shareholders of the Great Northern Railway Company (hereinafter called the Great Northern Company) were the defendants Hill, Clough, James, Morgan, and Kennedy; and that among the shareholders of the Northern Pacific Railway Company (hereinafter called the Northern Pacific Company) were the defendants Morgan, Bacon, Baker, Hill, Kennedy, James, and Lamont. They aver that the persons named and meant to be designated as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Great Northern Company did not at any time, nor in any manner, own or control a majority of said stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and not in association with each other, or with any other person or persons, and neither of them was under any obligation or promise to any of the others, or to any other person, to hold, use, or vote his stock otherwise than as he should from time to time determine to be best for his own individual interest. The persons named and meant to be designated as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Northern Pacific Company did not, at the date named, nor at any time, or in any manner, own or control a majority of such stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and neither of them had any control of the holdings of the other, or of any other person or persons, and neither of them was under any promise or obligation to the other, or to any person, to hold, use, or vote his stock otherwise than as he should from time to time determine to be best for his own individual interest.

Except as herein admitted and averred, they deny each and every allegation of subdivision II of the petition.

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III.

They admit that the Northern Pacific Company owned and operated a railway from Ashland, in Wisconsin, via Duluth, and from St. Paul, across Minnesota, North Dakota, Montana, Idaho, and Washington, and into Oregon, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; and the Great Northern Company operated lines of railway extending from St. Paul, in the State of Minnesota, across said State and North Dakota, Montana, Idaho, and Washington to

Everett and Seattle, in Washington, passing through Spokane, in that State.

They admit that the said lines so operated by said companies connected with other railway lines, and that, either directly or by means of such other railway lines, they connected with lines of steamships on the Great Lakes and the ocean; and that the mileage operated by said companies aggregated about fifty-five hundred (5,500) miles for the Northern Pacific Company and about forty-one hundred and twenty-eight (4,128) miles for the Great Northern Company.

They deny that the lines operated by said companies are parallel or competing, except for the short distances and to the limited extent hereinafter mentioned, and deny that said companies were engaged in active competition with each other, except in the manner and to the extent hereinafter stated.

And except as hereinabove and hereinafter stated, they deny each and every allegation in subdivision III of said petition.

IV.

They admit and aver that prior to 1893 those portions, and *and* those portions only, of the lines of the Northern Pacific Company which had been built and were operated by virtue of the act of Congress incorporating the Northern Pacific Railroad Company, approved July 2, 1864, were owned and operated by the last-named company, and in the year 1893 that company became insolvent and its lines passed into the hands of receivers appointed by various Federal courts.

They admit that while in this condition a contract was made as set forth in the report of the Pearsall case, referred to in the
131 petition. They aver that said contract was made under and in conformity with the provisions of the act of incorporation of the Great Northern Company, and that the only objection made to the validity of the contract was that the provisions in said charter under which it was made had been repealed by subsequent general laws of the State. For the terms of the decision of the Supreme Court of the United States, they refer to the report of the case. They deny that the case, or that the decision therein, is correctly stated in the petition. And they aver that neither the said contract nor the issues raised and decided in the said Pearsall case have any relevancy to the matters in controversy in this case.

V.

They admit and aver that in the winter and spring of 1901 the defendant railway companies, for the purpose of promoting their several interests and the interests of the country traversed by their lines and by those of the Chicago, Burlington and Quincy Railroad Company, purchased in equal parts the stock of the last-named company to the amount and at the price and upon the terms of pay-

ment stated in the petition. They admit that the lines operated by the Chicago, Burlington and Quincy Railroad Company and its connections are substantially as stated in the petition. They deny that what is called in the petition the Burlington system was or is parallel to or competing with what is therein called the Union Pacific system, but admit that some of the lines of each system compete with some lines of the other.

They deny that said purchase of stock was made in contemplation of the ultimate placing of the Great Northern and Northern Pacific systems under a common source of control, or that it was made for any other motive or with any other purpose than is hereinafter stated.

Except as herein admitted, they deny each and every allegation in subdivision V of the petition.

VI.

They deny that prior to the organization of the Northern Securities Company (hereinafter called the Securities Company)
132 the defendants James J. Hill or J. Pierpont Morgan, or said Hill and Morgan, or any person associated with them, or either of them, owned or controlled a majority of, or held a controlling interest in, the stock of either of said railway companies.

They deny that said persons, or that any of the persons concerned in the formation of the Securities Company, contrived or intended any of the things alleged in subdivision VI of the petition or entered into any agreement or conspiracy to do any of the things charged in said subdivision.

They admit and aver that said James J. Hill and other holders (not exceeding ten in number) of the stock of the Great Northern Company, but not including the defendants Morgan, Bacon, and Lamont, did plan the formation of the Northern Securities Company, with an authorized capital of four hundred million dollars ($400,000,000), for the purposes, and those only, set forth in its certificate of incorporation. They deny that James J. Hill and J. P. Morgan agreed between themselves, or with other stockholders of either of the defendant railway companies, or with either of said railway companies, or with the Securities Company, or with any one whomsoever, that a controlling interest of the stock of either of said railway companies should be turned over or transferred to the Securities Company, whether in exchange for its stock or otherwise.

They deny that any of the matters stated in subdivision VI of the petition were contemplated or intended in the formation of the Securities Company, or have resulted or will result from its formation and operation. And they deny the allegation that it is the duty of the directors of said railway companies to pursue a policy which will promote the interests of both systems at the expense of the public.

VII.

They admit the organization of the Securities Company on November 13, 1901, under the laws of New Jersey, with the articles a copy of which is attached to the petition, and that the provisions of said articles were designedly inserted therein and were fully authorized by the general corporation laws of that State. And they say
that the exercise of the powers of a stockholder provided for
133 in said articles was not, as wrongly stated in the petition,
confined to the stock of the defendant railway companies which the Securities Company might hold.

They aver that the clause in said articles partially quoted in paragraph VII of the petition was not intended to and does not enlarge the powers of said corporation as the same are set forth in the preceding clauses of said articles, but makes clear the power of the company to do such acts as making or procuring advances of money to any corporation whose securities are held by it, the indorsement or guaranty by it of the obligations of such corporation, becoming surety therefor, or in any lawful manner using its name or resources in aid of such corporation.

VIII.

They admit and aver that on or about the 14th of November, 1901, the Securities Company was organized by electing directors and officers, and among them the defendant, James J. Hill, as a director and president, but deny that he was or is the controlling power in the management of the Great Northern Company.

They admit that thereafter the defendant, James J. Hill, and certain other stockholders of the Great Northern Company, severally and each acting for himself alone, and without any agreement to that effect with any other stockholder, sold to the Securities Company a large amount of Great Northern stock at one hundred and eighty dollars ($180) per share in exchange for stock of the Securities Company at par, but they aver that the stock so sold was not within twenty-six million dollars ($26,000,000) of a majority of the stock of the Great Northern Company.

They admit that thereafter and about November 22, 1901, the Securities Company offered like terms of purchase to the other shareholders of the Great Northern Company, the offer to hold good for sixty days from its date, and that many of the shareholders of that company, each acting for himself alone, accepted such offer and made such sale.

They admit that the defendant, J. P. Morgan, and other shareholders of the Northern Pacific Company, sold to the Securities Company a majority of the stock of the Northern Pacific Company, and that the Securities Company has received such dividends as have been paid on the shares held by it in the same manner and at the

same rate as other shareholders; but they deny that the
134 Securities Company has acted, whether as owner of stock or otherwise, in the management or direction of either of said railway companies or in receipt or control of the earnings of either of them, and they aver that no change whatever has taken place in the management of the said railway companies or either of them, and that each of them is managed by the same board of directors and officers as existed before the organization of the Securities Company.

They deny that any of the things done by the defendants, James J. Hill and J. Pierpont Morgan, or by either of them, or by the Securities Company or its promoters, directors, officers, or stockholders, or any of them, were done in pursuance of the pretended combination or conspiracy alleged in subdivision VIII of the petition, or as an instrumentality to effect the purposes thereof, and they deny that by reason of the matters or any of them in the petition alleged a virtual or any consolidation of said defendant railway companies or their business has been effected or intended, and they deny any conspiracy or combination in restraint of trade or commerce among the States or with foreign nations, or that the defendants or any of them are attempting or intending to monopolize or restrain any such trade or commerce.

IX.

They deny each and every allegation in subdivision IX of the petition.

X.

The defendants say that they do not know and can not set forth how much additional stock of either defendant railway company the Securities Company is likely to acquire, since each acquisition of shares by it depends, among other contingencies, on the willingness of the holders of the said stock to sell it to the Securities Company upon terms which the latter shall be willing to accept.

XI.

These defendants say that the Securities Company, in acquiring shares of the Great Northern Company and of the Northern Pacific Company, dealt solely with the separate owners of the said shares in their respective individual capacities. They have no
135 knowledge of any agreement, promise, or understanding between any of the holders of said stock concerning the sale thereof to the Securities Company, and deny that any such agreement, promise, or understanding was ever made. All the sales and transfers of the said stock to the Securities Company were absolute and without any reservation of any right or interest in any share thereof to the seller or to any other person.

There has been and is no agreement, promise, or understanding

between any of the holders of said stock so acquired by the Securities Company, or between any of them and any other person or corporation, that any of said shares should at any time be held, used, or voted by the Securities Company for the purpose of combining or consolidating or placing under one common management or control the railways of the Great Northern Company and of the Northern Pacific Company, or the business thereof, or for the purpose of monopolizing or restraining traffic or competition between the said railways. Many stockholders of the said companies have not sold, and may never sell, their shares to the Securities Company; and the said railway companies have not nor have any of the directors of either of them, by any act, either formal or informal, or by suggestion, ever solicited any of their respective shareholders to sell their shares to the Securities Company. They say that the Securities Company was organized in good faith, and they deny all the allegations in subdivision XI of the petition.

XII.

They deny each and every allegation in subdivision XII of the petition.

XIII.

They deny each and every allegation in subdivision XIII of the petition.

Second.

Further answering the petition, these defendants, say that the facts as to the purchase of the shares of the Chicago, Burlington and Quincy Railroad Company (hereinafter called the Burlington Company) and the projecting and forming of the Securities Com-
136 pany, and the motives, intentions, and purposes of the persons and corporations concerned in these enterprises, or either of them, are not as erroneously stated in the petition, but were and are as follows:

I.

When projecting the line of the Great Northern Company to the Pacific coast that company and its directors contemplated the necessity of creating for the line not merely State and interstate, but an international, commerce. Nearly all the country traversed or reached by the line was then but sparsely settled or not settled at all. It was principally agricultural, grazing, or timber land, with mineral deposits in the mountain ranges believed to be large and valuable, but not developed or explored. Whatever commodities the region might furnish for carriage would be raw material, of great weight and bulk in proportion to its value, which would not bear transportation to market except at a low mileage rate, such as could be made possible only by every practical reduction in the cost of

transportation. The available market for all such products was far from the places of production.

In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for which is in the prairie States of the Mississippi valley east of the Rocky mountains; but the lumber and shingles from the Pacific coast would not bear the cost of transportation to those States if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. And the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line or reached by it could not furnish a market for commodities enough to load the returning cars; the result being that unless the company could secure traffic for carriage beyond the Pacific coast no great traffic either way could exist or be created.

To meet these conditions the Great Northern Company not only went to great additional expense in the construction of its line to obtain gradients lower than those of any other line to the Pacific coast, but also made great efforts to create and increase in the countries of eastern Asia a demand for the products of this country;
137 and soon after the completion of its railway in 1893 it induced a Japanese company to run a line of steamships, connecting with its railway, on the route between Seattle and ports of Japan, China, and Russian Siberia, and succeeded in creating, and has since been actively engaged in building up, a commerce in which the flour manufactured along its line, cotton (both raw and manufactured), iron and steel (especially steel rails and plates), machinery, and such other manufactures of this country as a market could be found or made for in eastern Asia, have been carried to oriental ports, and return cargoes of such oriental products as are consumed in this country have been brought back. A large westbound, as well as an increased eastbound, traffic has thus been secured by the company, enabling it to make such rates on lumber and other products of the country served by it as permit them to be shipped to eastern markets with profit to the shipper.

One year before the Burlington purchase this oriental traffic had reached such proportions that the Great Northern Company caused to be begun the construction of steamships to run from Seattle to ports in Japan, China, and the Philippines, which, from their great carrying capacity (being the largest in the world), will be able to carry at very low rates (if full cargoes can be secured), and thus enable the company to move the largest volume of westbound traffic (and also of eastbound traffic) at the lowest cost.

In the interstate and international commerce which the Great Northern Company has thus built up it competes both in this country and on the ocean with the other transcontinental lines (including the Canadian Pacific) and at the oriental ports it competes for commerce of the world. Its rates are, and must be, made in competition with the rates of ocean carriers and by way of the Suez canal.

The policy thus followed by the Great Northern Company in building up an international, and thereby interstate, commerce has been followed by the Northern Pacific Company since its reorganization in 1896.

In creating and maintaining this competitive interstate and international commerce both the Great Northern Company and the Northern Pacific Company were hampered and placed at a disadvantage with the other transcontinental railways, as well as with
138 European competitors, by the want of sufficient direct connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distributien from which their traffic must be supplied. And for many months before the purchase of the Burlington shares they had considered the best means of getting closer to such markets and sources of supply. The lines of the Burlington, better than those of any other company, fulfilled the requirements of both the Great Northern Company and the Northern Pacific Company in respect of markets for eastbound and freight for westbound traffic. The Burlington lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas, and Colorado, which afford the best markets for the lumber of the Pacific coast. They reach Denver, Kansas City, Omaha, and Aurora, where are located the principal smelters of silver-lead ores, such as are mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City, and Chicago, where are the great packing houses and the great markets for the cattle and sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon, and Washington.

They reach St. Louis and Kansas City, connecting there with lines traversing the cotton States, from which come raw and manufactured cotton required for shipment to China and Japan.

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery, and other manufactured articles that find a market in Japan and China.

The Burlington line southward from Minneapolis and St. Paul along the Mississippi river reaches the great coal deposits of southern Illinois, the largest west of Pennsylvania and West Virginia; and its light gradients and consequent low cost of transportation make it possible to supply such coal to points on the lines of each defendant railway company east of the Missouri river, relieving the people and the railways of that great territory from entire dependence upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain.

The price paid for said Burlington stock was lower per mile of main track covered by the stock than that for which the
139 stock of any other large and well-established system, in the same general territory, could then have been bought.

The purchase of the Burlington stock by the Northern Pacific

Company and the Great Northern Companies in equal parts served each company as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

The Great Northern and Northern Pacific Companies therefore each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching the best markets for the products of the territory along their lines and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the region traversed or reached by the Great Northern and North*the*- Pacific lines, and by their connecting lines of shipping on the Pacific coast. These connections and such interchange of traffic were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each company in the competition with the more southerly lines to the Pacific coast, with the Canadian Pacific railway, and with European carriers for the trade and commerce of the Orient.

In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, or to lessen any competition between the purchasers. Such purchase was not intended to have, and it can not have, any such effect.

The purchase of the Burlington stock was not made in view of the formation of the Securities Company, but solely from the motives and with the purposes already stated.

II.

The project of forming a holding company of any kind was not the result, in any way, of the failure of the plan which was defeated by the decision of the Supreme Court in the Pearsall case. There was no connection whatever between the two.

140 The project of a holding company which finally developed into the formation of the company incorporated November 13, 1901, had its inception years before that date, among several gentlemen, to wit, Mr. James J. Hill, Mr. John S. Kennedy, Mr. Samuel Thorne, Mr. D. Willis James, and others, not exceeding ten in number altogether, who had been large shareholders in the Great Northern Company and its predecessor, the St. Paul, Minneapolis and Manitoba Railway Company, some of them from the original organization of the latter company in 1879 and others from dates not long after that time. They have never held a majority of the stock of the Great Northern Company, but have taken an active interest in its policy and administration; have aided it when neces-

sary in financing its operations; have acted together in promoting its interests; have, with some exceptions, served from time to time as directors and officers (Mr. Hill having been president of the successive companies since 1882), and by reason of their active interest in the company and services to it have influenced to a large degree its policy and management. As far back as 1893, most of these gentlemen being well advanced and some far advanced in years, they began to discuss together what would be the effect upon the policy which under their influence the company had pursued with great benefit to its shareholders and the public should their holdings by death or otherwise become scattered, and by what means their holdings could be kept together, so as to secure the continuance of such policy in the management of the company. It was considered that if a company should be formed to which they might transfer their individual holdings their shares were likely to be held together so long as the majority in the holding company should so wish, and this would tend to give stability to the policy of the Great Northern Company, be of aid to it in financial operations, and maintain the value of their investments. These conclusions were the result of various consultations among the persons mentioned, or some of them, but no definite agreement was made for forming such a company or binding anyone to transfer his shares to it if formed.

From time to time, beginning with the reorganization of the Northern Pacific Company in 1896, Mr. Hill and said other Great Northern shareholders who had discussed with him the plan
141 of forming a holding company had made large purchases of Northern Pacific shares individually, each for himself, without any concerted action and solely as investments. About May 1, 1901, their aggregate holdings of the common stock of the Northern Pacific Company amounted to nearly twenty million dollars ($20,000,000) of the eighty million dollars ($80,000,000) common stock of the company, which also had a preferred stock amounting to seventy-five million dollars ($75,000,000), with the same voting power as the common stock. At this time the firm of J. P. Morgan & Co. held about six million dollars ($6,000,000) of the common stock. In the fall of 1900 Mr. Hill and said Great Northern shareholders discussed the question of putting their holdings of Northern Pacific stock into the proposed holding company, as well as the suggestion that all the other stockholders of the Great Northern Company should be given the opportunity of selling and transferring their shares to the holding company, and that its capital stock should be made large enough to enable it to buy such holdings, though it was not known that the holders of any considerable amount of Great Northern stock, other than those above named, would desire to make such transfer, but no agreement of any kind was entered into.

At the time of the purchase of the Burlington shares it was not contemplated by either purchasing company or its shareholders that any alliance between the purchasing companies or among

their shareholders was needed to preserve to each company its fair share of the advantages secured by the purchase. It was thought that the manifest interest of each company rendered any further guaranty or security needless. But pending or just after the conclusion of the negotiations for the Burlington stock parties acting in the interest of the Union Pacific Railway system did purchase Northern Pacific shares, both common and preferred, to the amount of about seventy-eight million dollars ($78,000,000), being a clear majority of the entire capital stock of that company. The apparent intent of such purchase was to defeat, and if successful it would have defeated, the carrying out of the purposes for which the Burlington shares had been bought by the Great Northern and Northern Pacific Companies and the development of the interstate and international commerce of each of them, and would have
142 subordinated the policy of each to an interest adverse to both the Great Northern and Northern Pacific Companies and to the public served by their lines.

To protect the interests of the shareholders of the Northern Pacific Company, J. P. Morgan & Co. made additional purchases of Northern Pacific common stock, which, with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about forty-two million dollars ($42,000,000), being a majority of the common stock. In view of the injury apprehended to both companies, and to their shareholders, and the better to protect their interests in the future, the Great Northern shareholders holding Northern Pacific shares deemed it advisible that the projected holding company should have power to purchase not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to said holding company, and the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic or operations of the Great Northern and Northern Pacific Companies, respectively. At this time it was not expected by any of the persons concerned that any Northern Pacific shares except the said forty-two million dollars ($42,000 000) would be acquired by the proposed holding company. The organization of that company was not dependent on any agreement that it should acquire a majority of the shares of either defendant railway company. It would have been organized if the Burlington purchase had not been made, and if its promoters had had no other shares to transfer to it than the thirty-four million dollars ($34,000,000) Great Northern stock and the twenty million dollars ($20,000,000) Northern Pacific stock, held by them on May 1, 1901. It was not known that all or how many of the shareholders of either of the railway companies would be likely to transfer their shares to the Securities Company. After its organization that company bought and still holds about one hundred and fifty million dollars ($150,000,000) of the stock of the Northern Pacific Company; and

it has also purchased and negotiated for the purchase of the stock of the Great Northern Company, as hereinbefore stated. Neither the said persons who were concerned in the formation of the
143 Securities Company, nor the said persons from whom the Securities Company has acquired the stocks of said railway companies, nor the Securities Company itself since its formation, nor its stockholders, directors, or officers, have planned or intended that the stock of said railways companies acquired by the Securities Company, or any part thereof, should be held, used, or voted by the Securities Company, or by its officers, agents, or proxies, for the purpose of combining, consolidating, or placing under one common management or control the railways of the Great Northern and Northern Pacific Companies or the business thereof; or for the purpose of monopolizing or restraining competition between the said railway companies; or for any other purpose than the election by each of said railway companies of a competent and distinct board of directors, able and intending to manage each of them independently of the other, and for the benefit of their shareholders and of the public. By the acts of the legislature of the State of Minnesota incorporating the Great Northern Railway Company, and by the acts of the legislature of the State of Wisconsin incorporating the Northern Pacific Railway Company, it is, in substance, provided that the business and affairs of each railway company shall be managed by a board of directors to be elected by the stockholders, and that all the powers of each corporation relating to said matters shall be vested in such board.

Every share of stock issued by the Northern Securities Company has been issued to the persons and corporations receiving the same in good faith, for full value paid to the Securities Company, either in cash or its equivalent, and in accordance with the provisions of its articles of incorporation and with the laws of the State of New Jersey. No agreement, promise, or understanding has been made between the Securities Company and any of its stockholders, or between its stockholders themselves, or any of them, or between said stockholders or any other persons or corporations, that the stock of the Securities Company should be held, used, or voted other than by each stockholder, separately and individually, and in such way as he should see fit, and there has been no agreement, promise, or understanding between said stockholders themselves, or any of them, or between said stockholders and any other person or
144 corporation, that they, or any of them, should use, hold, or vote their stock in the Securities Company in association or for any common purpose or object. The owners and holders of stock of the Securities Company are more than thirteen hundred (1,300) in number, and the ownership of the stock is being changed from day to day, by sales and transfers, in the usual course of dealing. The said persons who formed or were otherwise concerned in the formation of the said Securities Company have never, all together, held, owned, or otherwise controlled an amount of stock

of the said company equal to so much as one-third of the whole amount thereof now outstanding. The authorized capital of the Securities Company was deemed by those who planned its formation ample to furnish the means to pay for all such shares of the defendant railway companies as would likely be acquired by it, and to leave remaining a large amount to be used for the purchase of stock in other corporations not common carriers which the Securities Company might consider beneficial to acquire. The Securities Company was not formed as a scheme or a device to evade the act of Congress known as the "antitrust act," or any other law whatever, but solely for the purposes hereinbefore stated.

III.

The Securities Company was not formed, nor did any of the projectors of such company, nor any of those who sold their shares of stock to it, have any purpose or intention to restrain trade or commerce, or to lessen competition between said railway companies, or to monopolize traffic in any manner whatever; nor can any such results follow from the organization or operation of that company. In point of fact, since the organization of the Securities Company rates on the defendant railway companies' lines, including rates to and from points common to both, have voluntarily been so reduced as to decrease their earnings by upward of a million of dollars annually. For all interstate commerce on the lines of either the defendant railway companies, except traffic beginning and ending on their own lines, respectively, the rates are fixed by joint tariffs with connecting lines. In respect to all such traffic neither of the defendant companies has ever had, or can have, any independent rate-making power or control of traffic or rates. All joint
145 tariffs with other companies to or from points common to the lines of the defendant railway companies have always been, and necessarily must be, the same, whether the traffic is carried by one or the other of said companies. The total amount of all other interstate traffic—that is, traffic between common points on the two roads, which is not competitive both as to rates and quality of service with other carriers having equal rate-making power with them—is less than 2 per cent. of the total interstate traffic of the two companies.

IV.

These defendants say that the Securities Company was not organized for the purpose of acquiring a majority of the stock of either the Northern Pacific or Great Northern Company, but merely to purchase the stock of those who wished to sell, as above stated, and was not organized for the purpose of controlling railway rates in the slightest degree, and has not had and cannot have such effect.

The transactions referred to in the petition have consisted in the organization of a lawful corporation and the purchase of property

by it, and the persons who were concerned in the organization of the Securities Company, and those who have sold their shares to it, had every reason to believe, and did believe, that such sales were not in contravention of the act of Congress known as the "antitrust act."

In common with the general public they were aware that during the eleven years since the passage of that act in many instances the stock of a competing railway has been acquired by its competitor, or the shareholders thereof, such acquisitions including many of the principal railways doing business throughout the country. This has been done without objection from any branch of the Government of the United States, and has in every instance proved beneficial to the railways concerned and to the public. The Securities Company, as now existing, became and is necessary as a defensive measure against attempts of rival interests to gain control of the direction of one or both of defendant railway companies and defeat the great enterprise they had undertaken of establishing a large international and interstate traffic, and the effect of its organi-
146 zation upon interstate commerce must be determined upon consideration of the enterprise as a whole. If these lawful transactions, consisting of the purchase and sale of property, should hereafter have any effect in restraint of trade or commerce among the States or with foreign nations (which is hereby denied), that effect would be indirect, remote, incidental, not intended, and as nothing compared with the great expansion of the volume of interstate and international commerce which was intended, and which the defendants believe is destined, to result from the enterprise of the two railway companies that culminated in the purchase of the Burlington stock.

And these defendants say:

1. The "antitrust act" was not intended to prevent or defeat an enterprise in aid of a great competitive interstate and international commerce merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce, trifling both as respects territory and volume.

2. Nor was the act intended to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own, and sell their stock.

3. Otherwise construed, the act would be unconstitutional, because—

The power to regulate commerce with foreign nations and among the States does not give Congress the power to regulate any of the matters above mentioned in respect to corporations created by the States; and because—

Persons may not be deprived of their property without due process of law, by taking from them the right to sell it as their interest may suggest.

V.

There is a defect of necessary parties defendant herein, because, as already set forth, the persons who made sales of stock of the said railway companies to the Securities Company were numerous, exceeding more than 1,300 in number, and few of them had any connection whatever in the planning or forming of that company, and in their absence from this litigation no decree can be made affecting their rights in the premises.

147 VI.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JAMES J. HILL,
WILLIAM P. CLOUGH,
D. WILLIS JAMES,
JOHN S. KENNEDY,
GEORGE F. BAKER,
By GEO. B. YOUNG,
Solicitor and Counsel.

Entered 789, C. Eq.

Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainants,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

Answer of the Defendant Great Northern Railway Company.

M. D. GROVER,
Solicitor for the Defendant.

(Indorsed:) Filed May 5, 1902. Henry D. Lang, clerk.

148 In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainants,
v.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, and Others, Defendants.

The Answer of the Great Northern Railway Company to the Petition of the United States of America.

I.

This defendant admits and avers that the defendant railway companies were, at the time mentioned in the petition and are now, common carriers employed in transportation of freight and passengers within and among those States of the United States in which the railways operated by them are situated, and not further or otherwise, but were and are engaged in commerce among the several States and with foreign nations.

II.

This defendant admits that on and prior to November 13, 1901, the capital stock of the defendant railway companies was owned and controlled by their respective shareholders, and it avers that the outstanding capital stock of this defendant was owned by more than eighteen hundred (1,800) separate owners, and that among its shareholders were the defendants Hill, Clough, James, Morgan, and Kennedy. It avers that the persons named and meant to be designated in the petition as owning, controlling, or as being associated in the ownership and control of a majority of the stock of this defendant, did not at any time nor in any manner own or control a majority of said stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and not in association with each other, or with any other person or persons.

Except as herein admitted and averred, the defendant denies each and every allegation of subdivision II of the petition.

149 III.

This defendant admits that the Northern Pacific Company owned and operated a railway from Ashland, in Wisconsin, via Duluth, and from St. Paul, across Minnesota, North Dakota, Montana, Idaho, and Washington, and into Oregon, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle in Washington, and to Portland in Oregon; and that this defendant operated lines of railway extending from St.

Paul, in the State of Minnesota, across said State and North Dakota, Montana, Idaho, and Washington to Everett and Seattle in Washington, passing through Spokane in that State.

It admits that the said lines connected with other railway lines, and that, either directly or by means of such other railway lines, they connected with lines of steamships on the Great Lakes and the ocean; and that the mileage operated by said companies aggregated about fifty-five hundred (5,500) miles for the Northern Pacific Company and about forty-one hundred and twenty-eight (4,128) miles for this defendant.

It denies that said lines are parallel or competing, except for the short distances and to the limited extent hereinafter mentioned, and denies that this defendant and the Northern Pacific Company were engaged in active competition with each other, except in the manner and to the extent hereinafter stated. Except as hereinabove and hereinafter stated, it denies each and every allegation in subvivision III of said petition.

IV.

The defendant admits and avers that prior to 1893 those portions, and those portions only, of the lines of the Northern Pacific Company which had been built and were operated by virtue of the act of Congress incorporating the Northern Pacific Railroad Company, approved July 2, 1864, were owned and operated by the last-named company, and that in the year 1893 that company became insolvent and its lines passed into the hands of receivers appointed by various Federal courts.

It admits that while in this condition a contract was made, as set forth in the report of the Pearsall case, referred to in the petition.

It avers that said contract was made under and in conformity
150 with the provisions of the act of incorporation of this defendant, and that the only objection made to the validity of the contract was that the provisions in said charter under which it was made had been repealed by subsequent general laws of the State. It denies that the case or that the decision therein is correctly stated in the petition. And it avers that neither the said contract nor the issues raised and decided in the said case have any relevancy to the matters in controversy in this case.

V.

This defendant admits and avers that in the winter and spring of 1901, it and the Northern Pacific Company, for the purpose of promoting their several interests and the interests of the country traversed by their lines and by those of the Chicago, Burlington and Quincy Railroad Company, purchased in equal parts the stock of the last named company to the amount and at the price and upon the terms of payment stated in the petition. It admits that the lines operated by the Chicago, Burlington and Quincy Railroad Company

and its connections are substantially as stated in the petition. It denies that what is called in the petition the Burlington system was or is parallel to or competing with what is therein called the Union Pacific system, but admits that some of the lines of each system compete with some lines of the other.

It denies that said purchase of stock was made in contemplation of the ultimate placing of the system of this defendant and that of the Northern Pacific Company under a common source of control, or that it was made for any other motive or with any other purpose than as hereinafter stated.

Except as herein admitted, it denies each and every allegation in subdivision V of the petition.

VI.

This defendant says that it knows not and has not been informed, save by the petition, and cannot set forth its belief or otherwise as to any of the matters or things alleged or charged in subdivisions VI and VII of the petition as having been done, contrived, or attempted by the parties in said subdivision named or any of them.

151 VII.

This defendant further says it knows not and has not been informed, save by the petition, and can not set forth its belief, or otherwise, in respect to any of the matters changed in subdivisions VIII, IX, X, XI, XII, and XIII of the petition, except that it admits the organization of the Northern Securities Company, with the articles of incorporation, of which a copy is annexed to the petition.

VIII.

Further answering the petition, this defendant says that the facts as to the purchase of the shares of the Chicago, Burlington and Quincy Railroad Company (hereinafter called the Burlington Company) were and are as follows:

When projecting the line of this defendant to the Pacific coast, its directors contemplated the necessity of creating for the line not merely State and interstate, but an international commerce. Nearly all the country traversed or reached by the line was then but sparsely settled or not settled at all. It was principally agricultural, grazing, or timber land, with mineral deposits in the mountain ranges believed to be large and valuable, but not developed or explored. Whatever commodities the region might furnish for carriage would be raw material, of great weight and bulk in proportion to its value, which would not bear transportation to market except at low mileage rate, such as could be made possible only by every practicable reduction in the cost of transportation. The available market for all such products was far from the places of production.

In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for which is in the prairie States of the Mississippi valley east of the Rocky mountains, but the lumber and shingles from the Pacific coast would not bear the cost of transportation to those States if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. And the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line, or reached by it, could not furnish a market for commodities enough to load the returning cars;
152 the result being that unless the company could secure traffic for carriage beyond the Pacific coast no great traffic either way could exist or be created.

To meet these conditions this defendant company not only went to great additional expense in the construction of its line to obtain gradients lower than those of any other line to the Pacific coast, but also made great efforts to create and increase in the countries of eastern Asia a demand for the products of this country; and soon after the completion of its railway in 1893 it induced a Japanese company to run a line of steamships, connecting with its railway, on the route between Seattle and ports of Japan, China, and Russian Siberia, and succeeded in creating and has since been actively engaged in building up a commerce in which the flour manufactured along its line, cotton (both raw and manufactured), iron and steel (especially steel rails and plates), machinery, and such other manufactures of this country as a market could be found or made for in eastern Asia have been carried to oriental ports, and return cargoes of such oriental products as are consumed in this country have been brought back. A large westbound, as well as an increased eastbound, traffic has thus been secured by the company, enabling it to make such rates on lumber and other products of the country served by it as permit them to be shipped to eastern markets with a profit to the shippers.

One year before the Burlington purchase, this oriental traffic had reached such proportions that this defendant caused to be begun the construction of steamships to run from Seattle to ports in Japan, China, and the Philippines, which, from their great carrying capacity (being the largest in the world). will be able to carry at very low rates (if full cargoes can be secured), and thus enable the company to move the largest volume of westbound traffic (and also of eastbound traffic) at the lowest cost.

In the interstate and international commerce which this defendant has thus built up, it competes both in this country and on the ocean with the other transcontinental lines (including the Canadian Pacific), and at the oriental ports it competes for commerce of the world. Its rates are and must be made in competition with the rates of ocean carriers and by way of the Suez canal.

The policy thus followed by this defendant in building up an in-

ternational, and thereby interstate, commerce has been fol-
153 lowed by the Northern Pacific Company since its reorganization in 1896.

In creating and maintaining this competitive interstate and international commerce, both this defendant and the Northern Pacific Company were hampered and placed at a disadvantage with the other transcontinental railways, as well as with European competitors, by the want of sufficient direct connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distribution from which their traffic must be supplied. And for many months before the purchase of the Burlington shares they had considered the best means of getting closer to such markets and sources of supply. The lines of the Burlington, better than those of any other company, fulfilled the requirements of both this defendant and the Northern Pacific Company in respect of markets for eastbound and freight for westbound traffic. The Burlington lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas, and Colorado, which afford the best markets for the lumber of the Pacific coast. They reach Denver, Kansas City, Omaha, and Aurora, where are located the principal smelters of silver-lead ores, such as are mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City, and Chicago, where are the great packing houses and the great markets for the cattle and sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon, and Washington.

They reach St. Louis and Kansas City, connecting there with lines traversing the cotton States, from which come raw and manufactured cotton required for shipment to China and Japan.

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery, and other manufactured articles that find a market in Japan and China.

The Burlington line southward from Minneapolis and St. Paul along the Mississippi river reaches the great coal deposits of southern Illinois, the largest west of Pennsylvania and West Virginia;
and its light gradients and consequent low cost of transporta-
154 tion make it possible to supply such coal to points on the lines of each defendant railway company east of the Missouri river, relieving the people and the railways of that great territory from entire dependance upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain.

The price paid for said Burlington stock was lower per mile of main track covered by the stock than that for which the stock of any other large and well-established system in the same general territory could then have been bought.

The purchase of the Burlington stock by the Northern Pacific Company and this defendant in equal parts served each company

as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

This defendant and the Northern Pacific Company therefore each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching the best markets for the products of the territory along their lines, and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the regions traversed or reached by the lines of this defendant and those of the Northern Pacific Company and by their connecting lines of shipping on the Pacific coast. These connections and such interchange of traffic were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each company in the competition with the more southerly lines to the Pacific coast, with the Canadian Pacific railway, and with European carriers, for the trade and commerce of the orient.

In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, or to lessen any competition between the purchasers. Such purchase was not intended to have, and it can not have, any such effect.

The purchase of the Burlington stock was not made in view
155 of the formation of the Northern Securities Company, but solely from the motives and with the purposes already stated.

This defendant says, for all interstate commerce on the lines of either of the defendant railway companies, except traffic beginning and ending on their own lines respectively, the rates are fixed by joint tariffs with connecting lines. In respect to all such traffic neither of the defendant companies has ever had, or can have, any independent rate-making power or control of traffic or rates. All joint tariffs with other companies to or from points common to the lines of the defendant railway companies have always been, and necessarily must be, the same, whether the traffic is carried by one or the other of said companies. The total amount of all other interstate traffic—that is, traffic between common points on the two roads—which is not competitive both as to rates and quality of service with other carriers having equal rate-making power with them, is less than 2 per cent. of the total interstate traffic of the two companies.

And this defendant says, that the control of the direction of one of the defendant railway companies, by a rival interest, might defeat the great enterprise they had undertaken of establishing a large international and interstate traffic, and impose upon the other all the burdens of the joint obligations incurred, amounting to more

than $220,000,000, while taking from it all the benefits of the purchase of the Burlington shares.

IX.

And this defendant says, that its acts of incorporation provide that the shares of its capital stock shall be deemed personal property, and shall be transferable in such manner as its regulations or by-laws shall prescribe. The by-laws of this defendant, made pursuant to the said acts, direct that transfers of shares of its stock may be made by the surrender of the certificate issued therefor, and a written assignment thereof, signed by the owner, or his duly authorized attorney in fact, upon a book, to be called the "register of transfers," and that without such surrender and assignment no transfer of stock will be recognized by this defendant.

Prior to the filing of the petition herein, holders of regular certificates for this defendant's stock, individually and separately, and in the usual course of dealing, surrendered such certificates
156 to this defendant, and at the same time duly assigned, in writing, upon the said register of transfers, the shares covered thereby to the defendant, The Northern Securities Company, and thereupon, in each of such instances, this defendant recognized such transfer, and issued to the Securities Company its certificate therefor, as by law it was required to do.

The said transfers covered, in the aggregate, not to exceed five-twelfths (5-12) of the total number of shares of this defendant's stock now outstanding.

And this defendant says:

1. The "antitrust act" was not intended to prevent or defeat an enterprise, in aid of a great competitive interstate and international commerce, merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce, trifling both as respects territory and volume.

2. Nor was the act intended to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own, and sell their stock.

3. Otherwise construed, the act would be unconstitutional, because:

The power to regulate commerce with foreign nations and among the States does not give Congress the power to regulate any of the matters above mentioned in respect to corporations created by the States; and because

Persons may not be deprived of their property, without the process of law, by taking from them the right to sell it, as their interest may suggest.

X.

There is a defect of necessary parties defendant, because, as already set forth, the persons who made sales of stock of the defendant rail-

way companies to the defendant The Northern Securities Company were numerous, exceeding more than 1,300 in number, and few of them had any connection whatever in the planning or forming of the said Securities Company, and in their absence from this litigation no decree can be made affecting their rights in the premises.

157 XI.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

GREAT NORTHERN RAILWAY COMPANY,
By M. D. GROVER, Solicitor and Counsel.

Entered 789, C. Eq.

In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

Answer of the Defendant The Northern Pacific Railway Company.

C. W. Bunn, solicitor for the defendant.

(Endorsed:) Filed May 5th, 1902. Henry D. Lang, clerk.

158 In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

The Answer of the Defendant The Northern Pacific Railway Company to the Petition of the United States of America.

I. This defendant admits the allegations of paragraph I of the petition that this defendant and the Great Northern Railway Company were at the times mentioned in said petition and now are common carriers employed in the transportation of freight and passengers among the several States of the United States within which the railways operated by them are situated.

This defendant denies each and every other allegation of paragraph I of the petition.

II. This defendant admits the allegations of paragraph II of the petition that prior to November 13, 1901, the stock of this defendant was owned and controlled by its shareholders, and that among them were the parties in that behalf alleged.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph II of the petition.

III. This defendant admits the allegations of paragraph III of the petition that this defendant at the times mentioned owned and operated a railway extending from Ashland in Wisconsin via Duluth, Minnesota, and from St. Paul, Minnesota, across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; that the Great Northern Company operated lines of railway extending from St. Paul aforesaid across Minnesota, North Dakota, Montana, Idaho, and Washington,
159 passing through Spokane and extending to Everett and Seattle, in the State last aforesaid; that the said lines connected with other railway lines, and either directly or by means of such other railway lines connected with lines of steamships on the Great Lakes and the ocean, and that the mileage operated by said companies aggregated about five thousand five hundred miles for this defendant and about four thousand one hundred and twenty-eight miles for the Great Northern Company.

This defendant denies each and every other allegation of paragraph III of the petition.

IV. This defendant admits the allegations of paragraph IV of

the petition that, prior to the year 1893, a corporation known as the Northern Pacific Railroad Company, organized and existing under certain acts and resolutions of Congress, and which then operated some parts of the lines of this defendant, became insolvent and was placed in the hands of receivers appointed by various courts of the United States; that, while in this condition, a plan of reorganization was entered into by the bondholders of said company, and that an arrangement was proposed between the said bondholders and the Great Northern Company which was never carried out. This defendant admits that a case entitled Pearsall against The Great Northern Railway Company was decided by the Supreme Court of the United States on March 30, 1896, and is reported in volume 161 of the reports of said court, beginning on page 696.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph IV of the petition. It is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

V. This defendant admits the allegations in paragraph V of the petition that early in the year 1901 this defendant and the Great Northern Company, acting for the purpose of promoting their several interests, each purchased shares of stock of the Chicago, Burlington and Quincy Railroad Company of Illinois, paying therefor with the joint bonds of the Great Northern Company and the Northern Pacific Company, payable in twenty years from date, with interest at 4 per cent. per annum, at the rate of $200 in bonds for each
160 $100 in stock, and in this manner the said companies severally purchased and acquired each about 49 per cent. of said stock; that the lines operated by said Burlington Company and its connections were geographically as stated in the petition, and that some of said lines compete with some lines of what is called in the petition the Union Pacific system.

This purchase was made by these defendants primarily in order to secure a terminus in Chicago and permanent connection with the eastern and southeastern markets, which are especially valuable to the agricultural and mineral products of the Northwest, and also because the Burlington system serves a large and growing territory, and the purchase was deemed desirable and profitable in itself. It had no connection with the future formation of any company whatsoever and was not made with intent to violate the statute or common law of any State or of the United States, and was not in violation of any such law.

This defendant denies each and every other allegation of paragraph V of the petition. It is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

VI. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph VI of the petition.

VII. This defendant admits the allegation of paragraph VII of

the petition, that the defendant Northern Securities Company was heretofore organized, as it is informed and believes, under the general laws of the State of New Jersey.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph VII of the petition.

VIII. This defendant admits the allegations of paragraph VIII of the petition that the defendant, Northern Securities Company, has purchased and now holds and owns a large majority of the capital stock of this defendant, and that the Securities Company has received such dividends as have been paid on any shares held by it.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph VIII of the petition.

IX. This defendant denies any knowledge or information
161 sufficient to form a belief of each and every allegation of paragraph IX of the petition.

X. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph X of the petition.

XI. This defendant denies each and every allegation of paragraph XI of the petition.

XII. This defendant denies each and every allegation of paragraph XII of the petition. It is informed and believes that said paragraph consists merely of expressions of opinion, and is, therefore, without weight in support of any cause of action.

XIII. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph XIII of the petition.

XIV. As this defendant is informed and believes, the purchase by the Northern Securities Company of shares of stock of this defendant and the sale thereof by the owners have been expressly authorized by law. They have had no effect whatever, in law or in fact, in restraint or monopoly of trade or commerce among the several States or with foreign nations. The petition does not allege that at any place within the jurisdiction of this court or elsewhere any such restraint or monopoly has been effected.

If these lawful transactions, consisting merely of the purchase and sale of property, should hereafter have any effect in restraint or monopoly of trade or commerce among the several States or with foreign nations, that would not be their direct effect, but would be merely indirect, remote, incidental, and collateral, and would, therefore, not bring said transactions within said act of Congress above mentioned. Any other construction would render the statute unconstitutional, as beyond the power of Congress, and as depriving the sellers of the stock thus sold and also the stockholders of this defendant who have not sold their shares to the Securities Company, of liberty and property without due process of law, because, thus construed, it would be an inhibition upon their right to sell their

property. If complainant's contention is sustained, the right of the owner of property to sell the same will be dependent upon what the courts at any future time may hold to have been the intention of the purchaser in buying such property. This result would
162 seriously impair the liberty of the owner and the value of his property, and is contrary to the constitutional guaranties thereof.

These transactions are, therefore, not within the act of Congress above mentioned; nor has Congress any constitutional power to annul or prohibit action thus expressly authorized by State statutes under which the same has been or may hereafter be taken.

XV. There is a defect of necessary parties defendant herein, because in this suit it is sought to annul all sales of shares made by shareholders of this defendant to the Northern Securities Company and to cancel all certificates of stock of the latter company issued in purchase of the same. The parties making such sales are numerous, and many of them had no connection with the matter save to sell their shares to the Securities Company after its organization. It is obvious that in their absence no adjudication can be made annulling such sales to the Securities Company. A decree to such effect as prayed for by the petition necessarily would deprive such original sellers of their property without due process of law. All persons who sold shares in this defendant to the Securities Company are, therefore, necessary parties, and the petition is bad by reason of their absence.

XVI. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHERN PACIFIC RAILWAY COMPANY,
By C. W. BUNN, Solicitor.

C. W. BUNN AND
FRANCIS LYNDE STETSON,
Counsel for said Defendant.

163 Entered 789, C. Eq.

In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

Answer *to* the Defendants J. Pierpont Morgan and Robert Bacon.

Francis Lynde Stetson, solicitor for said defendants, Mills building, New York city.

Endorsed: Filed May 5, 1902. Henry D. Lang, clerk.

In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
against
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

The Answer of the Defendants J. Pierpont Morgan and Robert Bacon to the Petition of the United States of America.

I. These defendants admit the allegations of paragraph I of the petition that the Northern Pacific Railway Company and the Great Northern Railway Company were at the times mentioned in said petition and now are common carriers employed in the transportation of freight and passengers among the several States of the United States within which the railways operated by them are situated.

164 These defendants deny each and every other allegation of paragraph I of the petition.

II. These defendants admit the allegations of paragraph II of the petition that prior to November 13, 1901, the stock of the said railway companies was owned and controlled by their respective shareholders and that among the shareholders of said companies, respectively, were the parties in that behalf alleged.

These defendants deny each and every other allegation of paragraph II of the petition.

III. These defendants admit the allegations of paragraph III of

the petition that the Northern Pacific Company at the times mentioned owned and operated a railway extending from Ashland, in Wisconsin, via Duluth, Minn., and from St. Paul, Minn., across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; that the Great Northern Company operated lines of railway extending from St. Paul aforesaid across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Spokane and extending to Everett and Seattle, in the State last aforesaid; that the said lines connected with other railway lines, and either directly or by means of such other railway lines connected with lines of steamships on the Great Lakes and the ocean, and that the mileage operated by said companies aggregated about 5,500 miles for the Northern Pacific Company and about 4,128 miles for the Great Northern Company.

These defendants deny any knowledge or information sufficient to form a belief of each and every other allegation of paragraph III of the petition.

IV. These defendants admit the allegations of paragraph IV of the petition that, prior to the year 1893, a corporation known as the Northern Pacific Railroad Company, organized and existing under certain acts and resolutions of Congress, and which then operated some parts of the lines of the present Northern Pacific Company, became insolvent and was placed in the hands of receivers appointed by various courts of the United States; that
165 while in this condition a plan of reorganization was entered into by the bondholders of said company and that an arrangement was proposed between the said bondholders and the Great Northern Company, which was never carried out. These defendants admit that a case, entitled Pearsall against The Great Northern Railway Company, was decided by the Supreme Court of the United States on March 30, 1896, and is reported in volume 161 of the reports of said court, beginning on page 696.

These defendants deny any knowledge or information sufficient to form a belief of each and every other allegation of paragraph IV of the petition. They are informed and believe that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

V. These defendants admit the allegations of paragraph V of the petition that early in the year 1901, the defendants The Great Northern Company and The Northern Pacific Company, acting for the purpose of promoting their several interests, each purchased shares of stock of the Chicago, Burlington and Quincy Railroad Company of Illinois, paying therefor with the joint bonds of the Great Northern Company and the Northern Pacific Company, payable in twenty years from date, with interest at 4 per cent. per annum at the rate of $200 in bonds for each $100 in stock, and in this manner the said companies severally purchased and acquired each about 49 per cent.

of said stock; that the lines operated by said Burlington Company and its connections were geographically as stated in the petition, and that some of said lines compete with some lines of what is called in the petition the Union Pacific system.

These defendants deny any knowledge or information sufficient to form a belief of each and every other allegation of paragraph V of the petition. They are informed and believe that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

VI. These defendants admit that the defendant James J. Hill and certain other persons decided upon the formation of a securities company for the purposes set forth in the certificate of incorporation of the Northern Securities Company attached to the petition and in all respects as therein stated.

These defendants deny each and every other allegation of paragraph VI of the petition.

VII. These defendants admit the allegations of paragraph
166 VII of the petition that on November 13, 1901, the defendant Northern Securities Company was organized under the general laws of the State of New Jersey, with its principal office in Hoboken, in said State, and with an authorized capital stock of $400,000,000, and that a copy of the articles of incorporation of said company correctly stating its powers is attached to the petition.

These defendants deny each and every other allegation of paragraph VII of the petition.

VIII. These defendants admit the allegations of paragraph VIII of the petition that on or about November 14, 1901, the defendant Northern Securities Company was organized by the election of directors and officers; that the defendant James J. Hill was chosen a director and president thereof; that thereupon the said James J. Hill and other stockholders of the Great Northern Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Great Northern Company for the price of $180 par value of the capital stock of the Securities Company for each share of the capital stock of the Great Northern Company; that these defendants and other stockholders of the Northern Pacific Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Northern Pacific Company; that the Securities Company also offered, for a limited period, like terms of purchase to the other shareholders of the Great Northern Company; that the Securities Company now holds and owns a large majority of the capital stock of the Northern Pacific Railway Company, and a large amount, though less than a controlling interest, of the stock of the Great Northern Company, and has negotiated for the purchase of additional shares of that company, and that the Securities Company has received such dividends as have been paid on any shares held by it.

These defendants deny each and every other allegation of paragraph VIII of the petition.

IX. These defendants deny each and every allegation of paragraph IX of the petition.

X. These defendants deny any knowledge or information sufficient to form a belief of each and every allegation of paragraph X of the petition.

167 XI. These defendants deny each and every allegation of paragraph XI of the petition.

XII. These defendants deny each and every allegation of paragraph XII of the petition. They are informed and believe that said paragraph consists merely of expressions of opinion, and is, therefore, without weight in support of any cause of action.

XIII. These defendants deny each and every allegation of paragraph XIII of the petition.

XIV. In July, 1896, the capital stock of the Northern Pacific Railway Company was fixed at $155,000,000, of which $75,000,000 were preferred and $80,000,000 common stock. The preferred stock of the company was issued in exchange for various obligations of the former Northern Pacific Railroad Company because the holders thereof would not accept new common stock therefor. At the same time it was contemplated that the time would arrive when said preferred stock would properly be retired, and it was, accordingly, then provided that the preferred stock might be retired in whole or in part at par on any first day of January, up to and including January 1, 1917. Both classes of stock were made subject to a voting trust in this defendant Morgan and others, continuing until November 1, 1901, but terminable by the trustees in their discretion at an earlier date.

The Northern Pacific Company shared in the recent prosperity of the country, and its common stock appreciated in value until it was deemed practicable to carry out the original intention of retiring the preferred stock and also to terminate the voting trust. Accordingly said trust was terminated by the trustees upon January 1, 1901, and the preferred stock was retired. Although the latter action was in contemplation and was practically decided upon some time before the termination of the voting trust, it was not made the subject of formal action by the board of directors until November 13, 1901, and was completed upon January 1, 1902.

XV. As hereinbefore stated, early in 1901, the Northern Pacific Company, and the Great Northern Company, each purchased about 49 per cent. of the capital stock of the Chicago, Burlington and Quincy Railroad Company. This purchase was made by the

168 Northern Pacific Company primarily in order to secure a terminus at Chicago and permanent connection with the eastern and southeastern markets, which are especially valuable for the agricultural and mineral products of the Northwest, but also because the Burlington system serves a large and growing territory, and the purchase was deemed desirable and profitable in itself.

These purchases were not made, as the petition alleges, "in contemplation of the ultimate placing of the Great Northern and Northern Pacific system under a common source of control." They had no connection whatever with the future formation of the Northern Securities Company, or any other company whatsoever, and had no connection with the fact alleged in the petition that the Union Pacific Railway system is to some extent a competing system with the Burlington system.

The said purchases were not made with intent to violate the statute or common law of any State or of the United States; were not in violation of any such law, and are not charged in the petition to have been in any respect unlawful.

XVI. During the reorganization of the Northern Pacific system the firm of J. P. Morgan & Co., of which these defendants are members, acted as reorganization managers, and ever since the reorganization of the Northern Pacific Company has been its fiscal agent. Said firm has accordingly at all times desired to further the best interests of the company and all its stockholders, and especially to aid in steadily developing the business of the company and the prosperity of the country which it serves. Said firm considered that these results were accomplished, so far as possible, by the policy of the company during the existence of the voting trust, as above stated. Not long after the termination of the voting trust, however, and very early in May, 1901, said firm became aware that unusually large purchases of both classes of stock were in progress in the stock market, apparently in a single interest. Said firm was apprehensive that these purchases were for the purpose of securing control of the direction of the Northern Pacific Company and thus managing it, not for what said firm conceived to be the best interest of the company, but for some ulterior purpose of which said firm was not informed.

Accordingly said firm, prior to May 7, 1901, purchased common stock of the Northern Pacific Company in considerable
169 amounts, and their holdings upon that day amounted to about two hundred thousand shares. In making these purchases said firm acted on its own account and in behalf of no other person whomsoever, and was actuated by no motives save those above stated.

The said purchases were not made with intent to violate the statute or common law of any State or of the United States, and were not in violation of any such law.

XVII. For some years the defendant Hill and others who were interested in the Great Northern Company, but not including these defendants, had in contemplation the formation of a corporation for the purpose of purchasing their separate interests in that company, with the general object that said interests should be held together and the policy and course of business of the Great Northern Company should be continuous in developing the company's system and the territory served by it, and not subject to radical change and

possible inconsistency from time to time. In or about August, 1901, as this plan was approaching maturity, said parties for similar reasons, determined that they would also sell to the new company, when formed, their interests in the Northern Pacific Company, which were considerable in amount, and that the capital of the new company should be made sufficiently large to enable it to purchase all shares of the Great Northern and Northern Pacific Companies which the holders might desire to sell and any other shares which the new company might deem it advisable to acquire.

By this time it had become known that the purchases in the market of shares of the Northern Pacific Company to which reference is made above, had been made in behalf of a corporation known as the Oregon Short Line Railroad Company, controlled by the Union Pacific Railroad Company; that there were held in that interest shares of the Northern Pacific Company to about the amount of $41,000,000 of preferred stock, which, however, *was* to be retired on January 1, 1902, and $37,000,000 of common stock, together making 780,000 shares and constituting an absolute majority of the total capital stock of the Northern Pacific Company. Thereupon and therefore, with the view and for the purpose of protecting
170 the Northern Pacific Company and the holders of its common stock against the possible control of the direction of said company in an adverse interest, these defendants determined and also advised their friends to sell their Northern Pacific stock to the new company.

As set forth in the petition, the Northern Securities Company was duly organized pursuant to the laws of New Jersey upon November 13, 1901. It was organized according to law, and possesses all the powers set forth in its certificate of incorporation, and has full power to do every act which it has in fact done, and the petition does not allege the contrary.

It having become known that the Oregon Short Line Company was not disinclined upon satisfactory terms to sell its holdings of the major part of the Northern Pacific stock, the firm of J. P. Morgan & Company, deeming such action for the best interest of the Northern Pacific Company, purchased from said Oregon Short Line Company all its holdings of the capital stock of the Northern Pacific Company.

After its organization the Northern Securities Company duly purchased all the shares of the Northern Pacific Company and of the Great Northern Company hereinbefore mentioned, including those purchased by the firm of J. P. Morgan & Company from the Oregon Short Line Company, for which it paid partly in cash and partly in its own shares. It also was willing to purchase the shares of any other shareholders of the Great Northern Company, who desired to sell the same, for the price of one hundred and eighty dollars for each share of the Great Northern Company, payable in its own shares, and did actually purchase and pay for considerable amounts of said stock at such price.

None of these purchases by the Northern Securities Company were made with intent to violate the statute or common law of any State or of the United States, or were in violation of any such law.

XVIII. The foregoing is a correct statement of all the matters mentioned in the petition, omitting its many irrelevant adjectives, adverbs, and conclusions, and of some other facts in addition thereto. The transactions prior to the formation of the Northern Securities Company had no connection whatever with the formation
171 thereof, save as above stated. That company was organized, not for the purpose of acquiring a ma-ority of the stock of either the Great Northern or the Northern Pacific Company, but as above set forth. It was not organized for the purpose of affecting railway rates or competition in the slightest degree, and has not had any such effect. In the transactions above stated these defendants and, so far as they are aware, the other parties who have been engaged therein have never sought or intended to violate the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat., 209, c. 647), or to enter into any contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations.

The transactions have consisted merely in the organization of a lawful corporation of New Jersey and the sale to and purchase by it of property lawfully salable. All acts done in relation to the organization of the Securities Company and the purchase by it of shares of stock of the railway companies and the sale thereof by the owners have been expressly authorized by law. They have had no effect whatever, in law or in fact, in restraint or monopoly of trade or commerce among the several States or with foreign nations. The petition does not allege that at any place within the jurisdiction of this court or elsewhere any such restraint or monopoly has been effected.

If these lawful transactions, consisting merely of the purchase and sale of property, should hereafter have any effect in restraint or monopoly of trade or commerce among the several States or with foreign nations, such effect would not be their direct effect, but would be merely indirect, remote, incidental, and collateral and aside from any intention of the parties, and therefore would not bring said transactions within said act of Congress. Any other construction would render the statute unconstitutional as beyond the power of Congress, and as depriving these defendants and the sellers generally of the stock thus sold, of liberty and property without
due process of law, because, thus construed, it would be an
172 inhibition upon their right to sell their property. If complainant's contention be sustained, the right of the owner of

property to sell the same will be dependent upon what the courts at any future time may hold to have been the intention of the purchaser in buying such property. Such a result would seriously impair the liberty of the owner and the value of his property, and is contrary to the constitutional guaranties thereof.

These transactions are, therefore, not within the act of Congress above mentioned; nor has Congress any constitutional power to annul or prohibit action thus expressly authorized by State statutes under which the same has been taken.

XIX. There is a defect of necessary parties defendant herein because in this suit it is sought to annul all sales of shares made by shareholders of the Great Northern Company and the Northern Pacific Company to the Northern Securities Company, and to cancel all certificates of stock of the latter company issued in purchase of the same. As already set forth, the parties making such sales are numerous, and many of them had no connection with the matter save to sell their shares in the railway companies to the Securities Company after its organization. It is obvious that in their absence no adjudication can be made annulling such sales to the Securities Company. A decree to such affect as prayed for by the petition necessarily would deprive such original sellers of their property without due process of law. All persons who sold shares in the railway companies to the Securities Company are, therefore, necessary parties, and the petition is bad by reason of their absence.

XX. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court
173 shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

J. PIERPONT MORGAN,
ROBERT BACON,
By FRANCIS LYNDE STETSON, Solicitor.

FRANCIS LYNDE STETSON,
DAVID WILLCOX,
Counsel for said Defendants.

Entered 789, C. Eq.

In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant, *against* NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

Answer of the Defendant Daniel S. Lamont.

David Willcox, solicitor for said defendant, 22 Nassau street, New York city.

(Indorsed:) Filed May 5th, 1902. Henry D. Lang, clerk.

174 In the Circuit Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant, *against* NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } May, 1902.

The Answer of the Defendant Daniel S. Lamont to the Petition of the United States of America.

I. This defendant admits the allegations of paragraph I of the petition that the Northern Pacific Railway Company and the Great Northern Railway Company were at the times mentioned in said petition and now are common carriers employed in the transportation of freight and passengers among the several States of the United States within which the railways operated by them are situated.

This defendant denies each and every other allegation of paragraph I of the petition.

II. This defendant admits the allegations of paragraph II of the petition that prior to November 13, 1901, the stock of the said railway companies was owned and controlled by their respective shareholders, and that among the shareholders of said companies respectively were the parties in that behalf alleged.

This defendant denies each and every other allegation of paragraph II of the petition.

III. This defendant admits the allegations of paragraph III of the petition that the Northern Pacific Company at the times men-

tioned, owned and operated a railway extending from Ashland, in Wisconsin, via Duluth, Minnesota, and from St. Paul, Minnesota, across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; that the Great Northern Company operated lines of railway extending from St. Paul aforesaid across Minnesota, North Dakota, Montana, Idaho, and
175 Washington, passing through Spokane, and extending to Everett and Seattle, in the State last aforesaid; that the said lines connected with other railway lines, and either directly or by means of such other railway lines connected with lines of steamships on the Great Lakes and the ocean, and that the mileage operated by said companies aggregated about five thousand five hundred miles for the Northern Pacific Company and about four thousand one hundred and twenty-eight miles for the Great Northern Company.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph III of the petition.

IV. This defendant admits the allegations of paragraph IV of the petition that prior to the year 1893 a corporation known as the Northern Pacific Railroad Company, organized and existing under certain acts and resolutions of Congress, and which then operated some parts of the lines of the present Northern Pacific Company, became insolvent and was placed in the hands of receivers appointed by various courts of the United States; that while in this condition a plan of reorganization was entered into by the bondholders of said company, and that an arrangement was proposed between the said bondholders and the Great Northern Company, which was never carried out. This defendant admits that a case entitled Pearsall against The Great Northern Railway Company was decided by the Supreme Court of the United States on March 30, 1896, and is reported in volume 161 of the reports of said court, beginning on page 696.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph IV of the petition. He is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

V. This defendant admits the allegations of paragraph V of the petition that early in the year 1901 the defendants The Great Northern Company and The Northern Pacific Company, acting for the purpose of promoting their several interests, each purchased shares of stock of the Chicago, Burlington and Quincy Railroad Company of Illinois, paying therefor with the joint bonds of the Great Northern Company and the Northern Pacific Company, payable in
176 twenty years from date with interest at four per cent. per annum at the rate of two hundred dollars in bonds for each one hundred dollars in stock, and in this manner the said companies severally purchased and acquired each about forty-nine per cent. of said stock; that the lines operated by said Burlington Company and

its connections were geographically as stated in the petition, and that some of said lines compete with some lines of what is called in the petition the Union Pacific system.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph V of the petition. He is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

VI. This defendant admits that the defendant James J. Hill and certain other persons decided upon the formation of a securities company for the purposes set forth in the certificate of incorporation of the Northern Securities Company attached to the petition and in all respects as therein stated.

This defendant denies each and every other allegation of paragraph VI of the petition.

VII. This defendant admits the allegations of paragraph VII of the petition that on November 13, 1901, the defendaat Northern Securities Company was organized under the general laws of the State of New Jersey, with its principal office in Hoboken in said State and with an authorized capital stock of four hundred millions of dollars, and that a copy of the articles of incorporation of said company correctly stating its powers is attached to the petition.

This defendant denies each and every other allegation of paragraph VII of the petition.

VIII. This defendant admits the allegations of paragraph VIII of the petition that on or about November 14, 1901, the defendant Northern Securities Company was organized by the election of directors and officers; that the defendant James J. Hill was chosen a director and president thereof; that thereupon the said James J. Hill and other stockholders of the Great Northern Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Great Northern Company for the price of one hundred and eighty dollars par value of
177 the capital stock of the Securities Company for each share of the capital stock of the Great Northern Company; that this defendant and other stockholders of the Northern Pacific Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Northern Pacific Company; that the Securities Company also offered, for a limited period, like terms of purchase to the other shareholders of the Great Northern Company; that the Securities Company now holds and owns a large majority of the capital stock of the Northern Pacific Railway Company, and a large amount, though less than a controlling interest, of the stock of the Great Northern Company, and has negotiated for purchase of additional shares of that company, and that the Securities Company has received such dividends as have been paid on any shares held by it.

This defendant denies each and every other allegation of paragraph VIII of the petition.

IX. This defendant denies each and every allegation of paragraph IX of the petition.

X. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph X of the petition.

XI. This defendant denies each and every allegation of paragraph XI of the petition.

XII. This defendant denies each and every allegation of paragraph XII of the petition. He is informed and believes that said paragraph consists merely of expressions of opinion, and is, therefore, without weight in support of any cause of action.

XIII. This defendant denies each and every allegation of paragraph XIII of the petition.

XIV. In July, 1896, the capital stock of the Northern Pacific Railway Company was fixed at $155,000,000, of which $75,000,000 were preferred and $80,000,000 common stock. The preferred stock of the company was issued in exchange for various obligations of the former Northern Pacific Railroad Company because the holders thereof would not accept now common stock therefor. At the same time it was contemplated that the time would arrive when said preferred stock should properly be retired, and it was, accordingly, then provided that the preferred stock might be retired in whole or
178 in part at par on any first day of January, up to and including January 1, 1917. Both classes of stock were made subject to a voting trust in the defendant Morgan and others, continuing until November 1, 1901, but terminable by the trustees in their discretion at an earlier date.

The Northern Pacific Company shared in the recent prosperity of the country, and its common stock appreciated in value until it was deemed practicable to carry out the original intention of retiring the preferred stock and also to terminate the voting trust. Accordingly said trust was terminated by the trustees upon January 1, 1901, and the preferred stock was retired. Although the latter action was in contemplation and was practically decided upon some time before the termination of the voting trust, it was not made the subject of formal action by the board of directors until November 13, 1901, and was completed upon January 1, 1902.

XV. As hereinbefore stated, early in 1901 the Northern Pacific Company and the Great Northern Company each purchased about forty-nine per cent. of the capital stock of the Chicago, Burlington and Quincy Railroad Company. This purchase was made by the Northern Pacific Company primarily in order to secure a terminus at Chicago and permanent connection with the eastern and southeastern markets, which are especially valuable for the agricultural and mineral products of the Northwest, but also because the Burlington system serves a large and growing territory, and the purchase was deemed desirable and profitable in itself.

These purchases were not made as the petition alleges "in contemplation of the ultimate placing of the Great Northern and North-

ern Pacific system under a common source of control." They had no connection whatever with the future formation of the Northern Securities Company, or any other company whatsoever, and had no connection with the fact alleged in the petition that the Union Pacific Railway system is to some extent a competing system with the Burlington system.

The said purchases were not made with intent to violate the statute or common law of any State or of the United States; were not in violation of any such law, and are not charged in the petition to have been in any respect unlawful.

179 XVI. During the reorganization of the Northern Pacific system the firm of J. P. Morgan & Co. acted as reorganization managers, and ever since the reorganization of the Northern Pacific Company has been its fiscal agent and closely identified with the furtherance of its interests. Said firm, prior to May 7, 1901, purchased common stock of the Northern Pacific Company in considerable amounts and their holdings upon that day amounted to about two hundred thousand shares. As this defendant is informed and believes, in making these purchases said firm acted on its own account and in behalf of no other person whomsoever.

The said purchases were not made with intent to violate the statute or common law of any State or of the United States, and were not in violation of any such law.

XVII. As this defendant is informed and believes, for some years the defendant Hill and others who were interested in the Great Northern Company, but not including this defendant, had in contemplation the formation of a corporation for the purpose of purchasing their interests in that company, with the general object that said interests should be held together and the policy and course of business of the Great Northern Company should be continuous in developing the company's system and the territory served by it, and not subject to radical change and possible inconsistency from time to time. In or about August, 1901, as this plan was approaching maturity, said parties for similar reasons determined that they would also sell to the new company, when formed, their interests in the Northern Pacific Company, which were considerable in amount, and that the capital of the new company should be made sufficiently large to enable it to purchase all shares of the Great Northern and Northern Pacific Companies which the holders might desire to sell and any other shares which the new company might deem it advisable to acquire.

As set forth in the petition, the Northern Securities Company was duly organized pursuant to the laws of New Jersey upon November 13, 1901. It was organized according to law, and possesses all the powers set forth in its certificate of incorporation, and has full power to do every act which it has in fact done, and the petition does not allege the contrary.

180 After its organization the Northern Securities Company duly purchased all the shares of the Northern Pacific Com-

pany and of the Great Northern Company hereinbefore mentioned, and also a large amount of shares of the Northern Pacific Company purchased by the firm of J. P. Morgan & Company from the Oregon Short Line Railroad Company, for which it paid partly in cash and partly in its own shares. It was also willing to purchase the shares of any other shareholders of the Northern Pacific and the Great Northern Companies, who desired to sell the same, for the price of one hundred and fifteen dollars for each share of the Northern Pacific Company and one hundred and eighty dollars for each share of the Great Northern Company, payable in its own shares, and did actually purchase and pay for considerable amounts of said stock at those prices.

None of these purchases by the Northern Securities Company were made with intent to violate the statute or common law of any State or of the United States, or were in violation of any such law.

XVIII. The transactions prior to the formation of the Northern Securities Company had no connection whatever with the formation thereof, save as above stated. That company was organized, not for the purpose of acquiring a majority of the stock of either the Great Northern or the Northern Pacific Company, but as above set forth. It was not organized for the purpose of affecting railway rates or competition in the slightest degree, and has not had any such effect. In the transactions above stated this defendant, and, so far as he is aware, the other parties who have been engaged therein, have never sought or intended to violate the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat., 209, c. 647), or to enter into any contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations.

The transactions have consisted merely in the organization of a lawful corporation of New Jersey and the sale to, and pur-
181 chase by it, of lawfully salable property. All acts done in relation to the organization of the Securities Company and the purchase by it of shares of stock of the railway companies, and the sale thereof by the owners have been expressly authorized by law. They have had no effect whatever, in law or in fact, in restraint or monopoly of trade or commerce among the several States or with foreign nations. The petition does not allege that at any place within the jurisdiction of this court or elsewhere any such restraint or monopoly has been effected.

If these lawful transactions, consisting merely of the purchase and sale of property, should hereafter have any effect in restraint or monopoly of trade or commerce among the several States or with foreign nations, that would not be their direct effect, but would be merely indirect, remote, incidental, and collateral, and aside from

any intention of the parties, and would, therefore, not bring said transactions within said act of Congress above mentioned. Any other construction would render the statute unconstitutional as beyond the power of Congress and as depriving this defendant, and the sellers generally of the stock thus sold, of liberty and property without due process of law, because, thus construed, it would be an inhibition upon their right to sell their property. If complainant's contention be sustained, the right of the owner of property to sell the same will be dependent upon what the courts at any future time may hold to have been the intention of the purchaser in buying such property. This result would seriously impair the liberty of the owner and the value of his property, and is contrary to the constitutional guaranties thereof.

These transactions are, therefore, not within the act of Congress above mentioned; nor has Congress any constitutional power to annul or prohibit action thus expressly authorized by State statutes under which the same has been taken.

XIX. There is a defect of necessary parties defendant herein because in this suit it is sought to annul all sales of shares made by shareholders of the Great Northern Company and the Northern Pacific Company to the Northern Securities Company, and to cancel all certificates of stock of the latter company issued in purchase of the same. As already set forth, the parties making such sales are numerous, and many of them had no connection with the
182 matter save to sell their shares in the railway companies to the Securities Company after its organization. It is obvious that in their absence no adjudication can be made annulling such sales to the Securities Company. A decree to such effect as prayed for by the petition necessarily would deprive such original sellers of their property without due process of law. All persons who sold shares in the railway companies to the Securities Company are, therefore, necessary parties, and the petition is bad by reason of their absence.

XX. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL S. LAMONT,
By DAVID WILLCOX, Solicitor.

FRANCIS LYNDE STETSON,
DAVID WILLCOX,
Counsel for said Defendant.

183 The Circuit Court of the United States in and for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } In Equity.

The Replication of the United States of America, the Above-named Complainant, to the Answer of The Northern Securities Company, Defendant.

This replicant, The United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, The Northern Securities Company, for replication thereunto saith: That it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minnesota, June 2nd, 1902.

(Endorsed:) Replication to answer of Northern Securities Company. Filed June 2nd, 1902. Henry D. Lang, clerk.

184 The United States Circuit Court in and for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } In Equity.

The Replication of The United States of America, the Above-named Complainant, to the Answer of James J. Hill and Others, Defendants.

This replicant, The United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants, James J. Hill and others, for replication thereunto, saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual, in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minn., June 2, 1902.

(Indorsed:) Replication to answer of James J. Hill and others. Filed June 2, 1902. Henry D. Lang, clerk.

185 The United States Circuit Court in and for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } In Equity.

The Replication of The United States of America, the Above-named Complainant, to the Answer of The Great Northern Railway Company, Defendant.

This replicant, The United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, The Great Northern Railway Company, for replication thereunto saith, that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minn., June 2, 1902.

(Endorsed:) Replication to answer of Great Northern Railway Company. Filed June 2, 1902. Henry D. Lang, clerk.

186 The United States Circuit Court in and for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
v.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } In Equity.

The Replication of The United States of America, the Above-named Complainant, to the Answer of The Northern Pacific Railway Company, Defendant.

This replicant, The United States of America, saving and reserving to itself all and all manner of advantages of exception which

may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, The Northern Pacific Railway Company, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minn., June 2, 1902.

(Indorsed:) Replication to answer of Northern Pacific Ry. Co. Filed June 2, 1902. Henry D. Lang, clerk.

187 The United States Circuit Court in and for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } In Equity.

The Replication of the United States of America, the Above-named Complainant, to the Answer of J. Pierpont Morgan and Robert Bacon, Defendants.

This replicant, The United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiences of the answer of the defendants, J. Pierpont Morgan and Robert Bacon, for replication thereunto saith, that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true: all which matters and things this replicant is ready to

aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minnesota, June 2, 1902.

(Indorsed:) Replication to answer of J. Pierpont Morgan and Robert Bacon. Filed June 2, 1902. Henry D. Lang, clerk.

188 The United States Circuit Court in and for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY, THE NORTHERN Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } In Equity.

The Replication of The United States of America, the Above-named Complainant, to the Answer of Daniel S. Lamont, Defendant.

This replicant, The United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant Daniel S. Lamont, for replication thereto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, lor avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minn., June 2, 1902.

(Indorsed:) Replication to answer of Daniel S. Lamont. Filed June 2, 1902. Henry D. Lang, clerk.

189 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings, viz:

Appearance of M. D. Purdy *et al.* for complainant and order,
Bill in equity,
Præcipe for chancery subpœna and order.
Chancery subpœna.
Præcipe for appearance for Northern Securities Company *et al.* and order,
Præcipe for appearance Great North- Railway Company and order,
Appearance for Northern Pacific Railway Company and order,
Appearance of J. Pierpont Morgan and Robert Bacon and order,
Appearance of Daniel S. Lamont and order,
Answer of defendant Northern Securities Company,
Answer of defendants J. J. Hill *et al.*,
Answer of defendant Great Northern Railway Company,
Answer of defendant Northern Pacific Railway Company,
Answer of J. Pierpont Morgan and Robert Bacon,
Answer of Daniel S. Lamont,
Replication to answer of Northern Securities Company,
Replication to answer of J. J. Hill and others,
Replication to answer of Great Northern Railway Company,
Replication to answer of Northern Pacific Railway Company,
Replication to answer of J. Pierpont Morgan and Robert Bacon,
Replication to answer of Daniel S. Lamont,

with the original files and records thereof, which are in my custody as such clerk, and that said copies are true copies of the original files and records, and of the whole thereof, on file and of record in the cause therein named.

Witness my hand as clerk, and the seal of said court.

Done at my office in St. Paul, Minnesota, this 23rd day of December, A. D. 1902.

[SEAL.] HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

190 EXHIBIT D TO BILL OF COMPLAINT.

United States Circuit Court for the District of Minnesota, January Term, A. D. 1903.

THURSDAY MORNING, April 9, 1903.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, circuit judge; Hon. Charles C. Houpt, United States district attorney; Hon. William H. Grimshaw, United States marshal; Henry D. Lang, clerk.

UNITED STATES OF AMERICA *v.* THE NORTHERN SECURITIES COMPANY, THE Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont.	}	C. Equity. No. 789.

Decree.

This cause came on to be heard at this term and was argued by counsel (Hon. Philander C. Knox, the Attorney-General; Mr. D. T. Watson, special counsel; Mr. James M. Beck and Mr. W. A. Day, Assistant Attorneys-General, and Mr. John M. Froeman appearing for the United States, and Mr. George B. Young, Mr. John W. Griggs, Mr. M. D. Grover, Mr. C. W. Bunn, Mr. Francis Lynde Stetson, and Mr. David Willcox appearing for the defendants); and thereupon upon consideration of the evidence and the arguments,

It was ordered, adjudged and decreed as follows, to wit: That the defendants above named have heretofore entered into a combination or conspiracy in restraint of trade and commerce among the several States, such as an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful re-

191 straints and monopolies," denounces as illegal; that all of the stock of the Northern Pacific Railway Company and all the stock of the Great Northern Railway Company, now claimed to be held and owned by the defendant, The Northern Securities Company, was acquired and is now held by it in virtue of such combination or conspiracy in restraint of trade and commerce among the several States; that the Northern Securities Company, its officers, agents, servants, and employees, be and they are hereby, enjoined from acquiring or attempting to acquire further stock of either of the aforesaid railway companies; that the Northern Securities Com-

pany be enjoined from voting the aforesaid stock which it now holds or may acquire, and from voting at any meeting of the stockholders of either of the aforesaid railway companies, and from exercising or attempting to exercise any control, direction, supervision, or influence whatsoever over the acts and doings of said railway companies or either of them by virtue of its holding such stock therein; that the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants, and agents be, and they are hereby, respectively and collectively enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company or in its behalf by its attorneys or agents, at any corporate election for directors or officers of either of the aforesaid railway companies, and that they, together with their officers, directors, servants, and agents, be likewise enjoined and respectively restrained from paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold; and that the aforesaid railway companies, their officers, directors, servants, and agents, be enjoined from permitting or suffering the Northern Securities Company or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies. But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said The Northern Securities Company may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignments of the stock aforesaid to such person or persons as may now be the holders and owners
192 of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies.

It is further ordered and adjudged that the United States recover of and from the defendants its costs herein expended, the same to be taxed by the clerk of this court, and have execution therefor.

HENRY C. CALDWELL,
Presiding Judge.
WALTER H. SANBORN,
AMOS M. THAYER,
Circuit Judges.

A true record.
Attest: HENRY D. LANG, Clerk.

EXHIBIT E TO BILL OF COMPLAINT.

Northern Securities Company.

Directors.

Robert Bacon,	Daniel S. Lamont,
George F. Baker,	John S. Kennedy,
George C. Clark,	Edward T. Nichols,
William P. Clough,	George W. Perkins,
Edward H. Harriman,	Jacob H. Schiff,
James J. Hill,	James Stillman,
D. Willis James,	Nicholas Terhune,

Samuel Thorne.

26 LIBERTY STREET,
NEW YORK, March 22, 1904.

To the stockholders of the Northern Securities Company:

Since the formation of your company with a view of promoting, developing and enlarging the commerce and traffic of the country served by the Great Northern and Northern Pacific Railway Companies and by the Chicago, Burlington and Quincy Railroad Company, the traffic and earnings of the three railways have largely increased. Rates paid by the public have been materially reduced. The respective railways have been extended and their condition and facilities improved and increased.

The stock of the Northern Securities Company was issued solely for the shares of the Northern Pacific and Great Northern Railway Companies, and other properties purchased by it.

193 In forming the company and disposing of its shares, no commissions were paid, nor has the company incurred any expenses save those necessary for obtaining its charter, and for the economical conduct of its affairs.

The company's acquisition of Northern Pacific and Great Northern shares was made in the full belief that such purchases were in no wise obnoxious to any law of the United States—an opinion which has received the approval of four justices of the Supreme Court of the United States, namely, Mr. Chief Justice Fuller, and Associate Justices Edward D. White, Rufus W. Peckham and Oliver Wendell Holmes, in the suit brought by the United States against the right of the company to hold and vote the shares. However, the majority of the court, disregarding as irrelevant any beneficial increase of commerce, was of the opinion, that as a matter of law your company's holding of the stocks of the two railway companies in itself constituted a restraint of interstate commerce prohibited by the so-called Sherman act of 1890. Accordingly the railway com-

panies have been forbidden to permit your company to vote or to collect dividends on the shares held by it.

Therefore, your directors, at a meeting held this day, have, under advice of counsel, decided that in order to fully and promptly comply with the decree in this suit, it is necessary to reduce the capital stock of the company, and to distribute to its shareholders the shares of stock of said railway companies now held by it.

To this end they have adopted resolutions recommending to the stockholders:

First. That the capital stock of this company be reduced from 3,954,000 shares, now outstanding, to 39,540 shares, being a reduction of 99 per centum.

Second. That said 99 per cent. of the present outstanding shares be called in for surrender and cancellation.

Third. That against each share of the stock of this company so to be surrendered, there will be delivered

$39.27 stock of the Northern Pacific Railway Company,

$30.17 stock of the Great Northern Railway Company, and proportionate amounts thereof for each fraction of a share of stock of this company so to be surrendered.

As required by the laws of the State of New Jersey, under which the company was created, a special meeting of the shareholders of this company has been called by the board of directors, for Thursday, April 21, 1904, at eleven o'clock in the forenoon, at the
194 office of the company, 51 Newark street, Hoboken, N. J., to vote upon said resolutions and upon such other business as may be brought before said meeting.

For the purpose of this meeting, the stock transfer books will be closed April 18, 1904, at three o'clock p. m.

Holders of this company's stock to a large extent have already expressed their approval of the recommendations of the board, but the laws of New Jersey require a two-thirds vote of the shareholders to permit the company to reduce its capital stock. Such vote is the first step necessary for the proposed distribution of the railway companies' shares. The collection of the May and subsequent dividends on such shares being forbidden by the decree until such distribution has been made, the importance of promptly executing and forwarding proxies is obvious.

The assets of the company remaining in its treasury after the foregoing distribution is made, will consist of stocks and other property in no way involved in the suit, producing income, and conservatively valued at an amount in excess of the $3,954,000, to which it is proposed to reduce the stock of your company.

Notice of the due approval by the special meeting of the recommendations of the board of directors will be immediately published, whereupon stockholders should deliver their *entire* holdings of stock at this office promptly on and after April 23, 1904. Against such delivery, certificates for the one per centum thereof to be retained by stockholders, will be returned to them, together with amount of

stock of each of said railway companies, to which they may become entitled as above, on account of the ninety-nine per centum of their holdings of Northern Securities stock surrendered for cancellation. Fractional parts of shares will be adjusted by the delivery of scrip certificates.

All stock surrendered must be fully executed for transfer, either upon the certificates or upon an attached power of transfer.

By order of the board of directors.

JAMES J. HILL, President.
EDWARD T. NICHOLS, Secretary.

195 Circuit Court of the United States, District of New Jersey.
In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON Short Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
versus
NORTHERN SECURITIES COMPANY, Defendant.
} On Bill, &c.

Order.

(Filed April 20, 1904.)

The complainants above named, having filed a bill of complaint in the above entitled cause, together with certain affidavits annexed thereto, and desiring to move for a preliminary writ of injunction according to the prayer of said bill, and having applied to the court to fix the time and place for the hearing of a motion for such injunction;

It is ordered that Monday, the 25th day of April, A. D. nineteen hundred and four, at the hour of eleven o'clock, in the forenoon, be fixed as the time, and the circuit court rooms in the post-office building in the city of Trenton in the State of New Jersey as the place for the hearing of said motion, and that the complainants give notice to the defendant accordingly.

And it appearing to the court that there is danger of irreparable injury being caused to the complainants from delay before said application for a preliminary writ of injunction can be heard and decided, it is

Ordered that, until the hearing and decision upon said motion, the defendant Northern Securities Company, its directors, officers, agents and employees, be and they are hereby enjoined from in any way parting with, transferring, assigning, distributing or otherwise disposing of the shares of the capital stock of the Northern Pacific Railway Company received by it from the complainants Harriman and Pierce in November, 1901, as alleged in the bill of complaint,

or any of the common stock of said railway company into
196 which any preferred stock received from said complainants may have been converted, or any certificates now representing said shares or any of them.

And it is further ordered that delivery to the defendant or any of its officers or directors and to its registered agent in the State of New Jersey of a true but uncertified copy of the said bill of complaint, with the affidavits annexed, and of this order, on or before the twenty-first day of April, A. D. nineteen hundred and four, shall be sufficient service of this order and of notice of said motion for a preliminary injunction.

Dated, Trenton, N. J., April 20, 1904.

ANDREW KIRKPATRICK, Judge.

Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE RAILROAD COMPANY, and THE EQUITABLE TRUST COMPANY OF NEW YORK, Complainants,

versus

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

Affidavit of Edward H. Harriman.

(Filed May 20, 1904.)

UNITED STATES OF AMERICA,
Southern District of New York, State, } *ss:*
County and City of New York,

Edward H. Harriman, being duly sworn, deposes and says:

I. I am one of the complainants in the above entitled suit. At the time said suit was commenced and until recently I was absent in California and other Western States in connection with an inspection of the railroad companies of which I am a director and officer. Since my return, I have read the amended bill and
197 am familiar with its contents. The matters and things therein set forth, so far as they relate to the acts and deeds of the Oregon Short Line Railroad Company, Mr. Pierce and myself, are true to my own knowledge, and so far as they relate to the acts and deeds of other parties I believe them to be true. The matters and things set forth as to the acts and deeds of the Northern Securities and Northern Pacific Companies are true to the best of my knowledge and belief. Such knowledge and belief have been derived by me as a director of said companies.

II. Since prior to November, 1901, I have been a director and executive officer of the complainant Oregon Short Line Railroad

Company and of the Union Pacific Railroad Company and a director of the Northern Pacific Railway Company. Since November 14, 1901, I have been a director of the Northern Securities Company.

III. The Oregon Short Line Railroad Company and the Union Pacific Railroad Company are railroad corporations severally organized under the laws of the State of Utah, and they have express statutory authority and charter power to acquire and hold the stock of the Northern Pacific Railway Company. I am advised by counsel and believe that the acquisition and holding of such stock by either of said companies is not in violation of the statutes of the United States or of any State.

IV. Neither the railroad of the Oregon Short Line Railroad Company nor that of the Union Pacific Railroad Company is a parallel and competing line with the railroad of the Northern Pacific Railway Company. I am familiar with all the railroad lines of said three companies. Their roads serve entirely different markets and territories and do not compete for the same traffic or connect at any competitive point or terminals. The road of the Oregon Short Line Railroad Company runs north and south, whilst the lines of the Northern Pacific Railway Company run east and west. The lines of the Union Pacific Railroad Company are hundreds of miles from the lines of the Northern Pacific Railway Company, and said lines do not run through the same States or reach or serve the same territory or terminals. The railway of the Chicago, Burlington and Quincy Railroad Company is not operated by the Northern Pacific Railway Company, and the latter company does not own a majority of the stock of the Burlington Company, but on the contrary owns less than one-half of such stock. The Northern Pacific Railway Company does not exercise control of the management and operation of the Burlington Company and cannot exercise any
198 control of it in any way except in combination by and through co-operation with the Great Northern Railway Company. The Burlington road is in no sense a part of the Northern Pacific system.

V. During the winter and spring of 1900–1901, it was determined that it would be of great benefit to the Oregon Short Line Railroad Company and the public served by it as well as to all its affiliated lines, if it could secure and control interchange of business with the territory and markets of the Northwest which were served by the lines of the Northern Pacific Company. Such a connection would open new markets to the patrons and shippers on the lines of the Oregon and Union Pacific Companies, would greatly facilitate the interchange of the products and manufactures of the Northwest with those of the Middle West, South, Southwest and Pacific slope, and *vice versa*, and would, by such interchange and by supplying freight for carriage both ways, tend to decrease the cost of transportation and the rates to be charged to the public, and to increase

the business and earnings of both the Oregon and Northern Pacific Companies.

In pursuance of this policy, the Oregon Short Line Company acquired about $78,108,000 par value of the capital stock of the Northern Pacific Railway Company, which had been purchased prior to May 9, 1901. Its purchases consisted of $41,085,000 par value of preferred stock and $37,023,000 par value of common stock. Such purchases constituted a clear majority of the entire authorized and outstanding issue of the capital stock of the Northern Pacific Railway Company, namely, $155,000,000 par value, divided into $75,000,000 par value of preferred stock and $80,000,000 par value of common stock, and carried the control of the company.

VI. Subsequently, I was informed by Mr. James J. Hill that he and his associates, together with Messrs. J. P. Morgan & Co. had acquired and then held or controlled a majority of the Northern Pacific common stock, consisting of about $42,000,000 par value thereof, and that it was intended to retire the preferred stock of the Northern Pacific Company and convert it into common stock without affording the holders of the preferred stock the right to participate in any new securities that might be issued. This statement of Mr. Hill was confirmed by members of the firm of J. P. Morgan & Co. The result of such a plan, if consummated, would be to deprive the Oregon Short Line Company of its majority holding of the stock of the Northern Pacific Company and the control
199 which such holding would represent. The plan as outlined was to retire the existing preferred stock by means of certificates convertible into common stock, to be offered for subscription solely to the holders of existing common stock at the rate of seventy-five eightieths (75-80ths) of their holdings. At that time and during the entire year of 1901, Mr. Hill and his associates, together with Messrs. Morgan & Co., controlled the board of directors of the Northern Pacific Company, and a majority of such board were their nominees and appointed in their interest. After such proposed conversion, Messrs. Hill and Morgan and their associates would hold in one combination of men acting together a majority of the stock of the Northern Pacific Company.

VII. The plan or scheme to combine the holdings of a majority of the capital stock of the Great Northern and Northern Pacific Companies in a holding company attacked and condemned in the Government suit was conceived and initiated by Mr. Hill and his associates prior to November, 1901, without the knowledge of Mr. Pierce or myself or the Oregon Short Line Company, and in hostility and antagonism to the interests which we represented. Neither Mr. Pierce nor I nor the Oregon Short Line Company had anything whatever to do with any combination or agreement among holders of Great Northern or Northern Pacific stock prior to or antedating the organization of the Northern Securities Company, nor did we at any time become a party to any such combination. The first information we had of the plan was from Mr. Hill and J. P. Morgan &

Co. to the effect that Mr. Hill and his associates had determined to organize a holding company and that they intended to transfer to such holding company a majority of the capital stock of both the Northern Pacific and the Great Northern Companies. My conversations on the subject were with Mr. Morgan, Mr. Steele, Mr. Bacon and Mr. Perkins, members of said firm, but I cannot remember exactly what each said, and at the present time can only recollect the substance and result of my conversations with them.

I was then urged by Messrs. Morgan & Co. to dispose of the Northern Pacific stock held by the Oregon Short Line Company on the ground that it would be a minority holding under the plan of conversion if consummated, that the majority would be held by the holding company, and that there would probably be no market for any such minority holding. They further stated that upon the organization of the proposed holding company, they would be prepared to purchase the holdings of stock of the Northern Pacific owned by the Oregon Short Line and to pay therefor in the
200 stock of the holding company at the rate of 115 for all our stock, which would be the rate at which the holding company would take in the common stock held by them and Mr. Hill and his associates, and all other parties, and they thereupon offered me those terms. I took the matter under consideration and conferred with members of the board of directors of the Oregon Short Line Company. The conversion under conditions reducing the Oregon Short Line holdings to a minority was then a foregone conclusion unless we were prepared to commence litigation, which would be protracted and which would probably be detrimental to the value of all railroad securities in view of the condition of the financial markets resulting from the panic of May 9, 1901. The alternative of not accepting shares of the holding company, but holding the minority interest in the Northern Pacific Company, involved serious risks of great loss, as it would then be to the interest of the holding company to sacrifice the Northern Pacific for the benefit of the Great Northern Company. It was, therefore, finally agreed with Messrs. J. P. Morgan & Co. that the Oregon Short Line Company would turn over its entire holdings of Northern Pacific stock for $82,491,871 par value of the stock of the holding company and $8,915,629 in cash. Some time after the terms of the agreement had been settled, and on November 18, 1901, Messrs. J. P. Morgan & Co. notified me to deliver the Northern Pacific stock to the Northern Securities Company, and informed me that such company would close the transaction, and that we would receive from it the stock and cash payment agreed upon. In pursuance of such notification, I attended with Mr. Pierce at the office of the Northern Securities Company on that day, when the certificates for said shares of preferred and common stock of the Northern Pacific Company standing in the names of myself and Mr. Pierce, namely, $78,108,000 par value, duly endorsed, were delivered to the Securities Company, and Mr. Hill delivered to us certificates for $82,491,871 par value

of stock of the Securities Company in the joint names of Mr. Pierce and myself. The said $82,491,871 par value of the capital stock of the Northern Securities Company was then and has ever since remained registered in our names, and the certificates therefor are in the possession of the Equitable Trust Company of New York as pledgee under the deed of trust of July 17, 1902, annexed as Exhibit B to the amended bill. Neither Mr. Pierce nor myself had or have any personal interest in said stock, and at all times the same was held by us and is still registered in our names as trustees
201 for the use and benefit of the Oregon Short Line Company, which company was then and at all times has been and still is the beneficial owner thereof. At the time I agreed with Messrs. J. P. Morgan & Co. to turn over the stock of the Northern Pacific Company held by the Oregon Short Line Company, it had been understood between them and myself that all of the outstanding preferred stock of the Northern Pacific Company would be converted into common stock.

VIII. As a director of the Northern Pacific Railway Company, I know that all of its preferred stock issued and outstanding in November, 1901, consisting of $75,000,000 par value of shares of $100 each, has been converted into common stock of the company through the medium of convertible certificates, which were immediately after issue changed into a like amount of the common stock of the company at par. As a director of the Northern Securities Company, I know that the company did not in November or December, 1901, have any funds with which to pay cash for $34,709,062 of Northern Pacific convertible certificates except through or by means of the preferred stock so delivered by Mr. Pierce and myself on November 18, 1901. As to the proceeds or credits in respect of the remaining $6,375,938 par value of the preferred stock, I have no knowledge, but I always understood that the whole amount of the $41,085,000 of preferred stock so delivered to the Northern Securities Company by Mr. Pierce and myself had been actually converted into common stock. The facts stated in the affidavit of Mr. William Mahl, sworn to May 16, 1904, have only come to my knowledge within the last few days, and as the result of an examination of the books of the Securities Company made on the 12th and 13th of May, 1904.

IX. I attended a meeting of the board of directors of the Northern Securities Company held on the 22d day of March, 1904, at which the preamble and resolutions set forth in paragraph XIV of the amended bill were adopted. I declined to vote at such meeting. Mr. Hill, the president of the company, reported to the board that he had written a letter to the Attorney General of the United States of which a copy is annexed as Exhibit A to this affidavit.

X. The Northern Pacific Company since November 18, 1901, has declared dividends equal to fourteen (14) per cent. During the same period, the Oregon Short Line Company has collected in dividends on the $82,491,871 Northern Securities stock the sum of $7,939,835.75.

XI. I have been for thirty years engaged in business in
202 the city of New York as a broker, banker and executive officer of corporations. I know the market values of securities, and particularly those of railroad companies. I am familiar with the properties of the Northern Pacific and Great Northern Companies and with their intrinsic values and present earnings. Under the proposed plan of *pro rata* distribution, the Oregon Short Line Company would be compelled to take $32,070,612 par value of Northern Pacific stock, and $24,638,919 par value of Great Northern stock.

XII. The present market value of the Northern Pacific stock is about $135 per share, and of the Great Northern stock about $170 per share. The present basis of dividends upon both the Northern Pacific and Great Northern stock is equal to the rate of seven per cent. per annum.

E. H. HARRIMAN.

Subscribed and sworn to before me this 16th day of May, 1904.
[L. S.] JOHN P. TUOMEY,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

EXHIBIT A TO AFFIDAVIT OF EDWARD H. HARRIMAN, VERIFIED MAY 16, 1904.

Northern Securities Company, 26 Liberty Street.

NEW YORK, March 21st, 1904.

Honorable Philander C. Knox, Attorney-General.

SIR: The decree of the circuit court of Minnesota having been affirmed by the Supreme Court of the United States, the Northern Securities Company, without question or delay, will comply therewith. In order that there may be no room for misleading or untruthful reports, we deem it advisable to state to you this fact. The company contemplates a speedy dissolution; but it is deemed by the directors unwise to bring this about, until after it has divested itself of the shares of the Northern Pacific and Great Northern Railway Companies' stock by a distribution of the same, ratably, amongst the stockholders.

I enclose a copy of the resolutions which have been passed by the board. Without delay, after the stockholders have acted, the capital stock will be so reduced as to permit a distribution of the rail-
203 way shares amongst the stockholders of the Northern Securities Company in the only way feasible, in the judgment of the board. The method of distribution proposed by the board of directors will accomplish the purpose of the Government, and will preserve the equitable rights of all the stockholders as amongst themselves.

Respectfully yours, J. J. HILL, President.

Circuit Court of the United States, District of New Jersey.
In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Complainants,
versus
NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILroad Company, Defendants.

Affidavit of Winslow S. Pierce.

(Filed May 20, 1904.)

UNITED STATES OF AMERICA,
Southern District of New York, State, County, and City of New York, } *ss:*

Winslow S. Pierce, being duly sworn, deposes and says:

I. I am one of the complainants mentioned in the amended bill in the above entitled suit, and the deponent who subscribed and swore to the affidavit of April 20, 1904, filed with the original bill. I reiterate the statements made in such affidavit as fully as if here set forth at length.

II. After the filing of the original bill in the above entitled suit, I attended the meeting of the stockholders of the Northern Securities Company pursuant to the notice, Exhibit E to the original and amended bill, and at such meeting read to the stockholders a notice, of which a copy is hereto annexed as Exhibit No. 1, and after reading the same delivered it to the secretary of the company, Mr. Nichols.

204 III. I annex hereto as Exhibit No. 2 extracts from the testimony of James J. Hill, Mr. Charles Steele, Mr. J. Pierpont Morgan, Mr. George W. Perkins, Mr. John S. Kennedy and Mr. William P. Clough contained in the record of the suit in the circuit court of the United States for the district of Minnesota, as printed by the clerk of the Supreme Court of the United States. I am informed by Mr. Guthrie, one of the complainants' counsel, that he has agreed with Mr. Stetson, one of the counsel for the Northern Securities Company, that either party on the motion for a preliminary injunction can read from said record extracts of the testimony of any witness, provided the extracts are served upon the other side prior to the hearing. I am informed and verily believe that all of the depositions from which extracts are annexed were actually made by said witnesses and introduced and read in evidence in said suit, and this appears from the official transcript of record printed by the clerk of the Supreme Court of the United States and filed in his

office, of which I have examined a copy in the possession of complainants' counsel.

WINSLOW S. PIERCE.

Subscribed and sworn to before me this 16th day of May, 1904.

[L. S.] JAMES L. MOCK,
Notary Public, Kings County, N. Y.

Certificate filed in New York county.

EXHIBIT No. 1 TO AFFIDAVIT OF WINSLOW S. PIERCE, VERIFIED MAY 16, 1904.

Notice is hereby given to the special meeting of stockholders of the Northern Securities Company, that the undersigned claim that the shares of the capital stock of the Northern Pacific Railway Company delivered by Edward H. Harriman and Winslow S. Pierce to the Northern Securities Company on or about November 18, 1901, and consisting of $37,023,000 par value of the common stock of said railway company and $41,085,000 par value of the preferred stock of said railway company and the common stock into which said preferred stock had been converted belong to the Oregon Short Line Railroad Company as the legal and equitable owner thereof, that the Northern Securities Company is not now and never became the owner thereof, but is simply a custodian, and that the under-
205 signed are entitled to the return and delivery to them of certificates for said stock of the Northern Pacific Railway Company upon the surrender by them of $82,491,871 par value of the capital stock ofthe Northern Securities Company and the payment of $8,915,629 in cash received by them upon such delivery of said Northern Pacific stock to the Northern Securities Company as aforesaid.

Notice is further given that the said Northern Securities Company has no right to distribute the said Northern Pacific stock *pro rata* among the stockholders of the Northern Securities Company, or otherwise dispose of the same, except to return the same to the undersigned.

Notice is further given that the undersigned have instituted a suit in the circuit court of the United States for the district of New Jersey, to have it adjudged that they are entitled to the return of said Northern Pacific stock to them, and that in said suit a restraining order has been granted by the Honorable Andrew Kirkpatrick, United States judge, restraining and enjoining the Northern Securities Company until the hearing and decision of the application of the undersigned for a preliminary writ of injunction from parting with, disposing of, assigning, transferring or distributing said stock of the Northern Pacific Railway Company so received from the said Harriman and Pierce, or the certificates which now represent the

same, and that a copy of said restraining order and of the bill of complaint, exhibits and affidavits on said motion for a preliminary injunction have been duly served on the officers of the Northern Securities Company.

April 21, 1904.

(Signed) EDWARD H. HARRIMAN,
By WINSLOW S. PIERCE.
WINSLOW S. PIERCE.
OREGON SHORT LINE RAILROAD CO.,
By WM. D. CORNISH, Vice-President.

EXHIBIT No. 2 TO AFFIDAVIT OF WINSLOW S. PIERCE, VERIFIED MAY 16, 1904.

I.

Extracts from the testimony of James J. Hill, George W. Perkins, Charles Steele, and William P. Clough in the Government suit touching the transfer of the Northern Pacific stock owned by
206 the Oregon Short Line Company to the Northern Securities Company.

Mr. HILL testified (fols. 371, 374, 376, 378–380):

"I knew from time to time something of the negotiations, but the negotiations were carried on and closed, whenever they were closed, by Morgan & Co. * * * I was not, however, the main party in carrying on the negotiations." * * *

"Q. I will ask you this, Mr. Hill: Do you know whether or not there was an agreement for the sale of this stock previous to November?

A. I know of no such agreement. I think and feel certain that if any such agreement had been made I would have known something of it." * * *

"Q. I want to make this quite clear, if I can, Mr. Hill. Do you now know of your own knowledge that at the time when the sale was actually made by Mr. Harriman to J. Pierpont Morgan & Co., that it was agreed that Mr. Harriman should receive, as part consideration for that stock, Northern Securities Company stock to a large amount?

A. I knew that that was the course that was pursued, but when I got that knowledge I can't recollect. I can't recall whether it was before or at the time the stock was delivered to the Securities Company. Now, it might be that I knew a day or two before. It might be that I knew three or four days, because the transaction was large and the time that would elapse between the purchase of the stock by Morgan, or what arrangement he made for the purchase, rather— t was part cash——

Q. What I want to get at is this: Are you able to state now whether or not you knew prior to the actual transfer or sale of the Harriman stock to J. Pierpont Morgan & Co., that as a part consideration for that transfer and sale, Northern Securities Company's stock to a large amount was to be turned over to the Harriman interests? That is what I want to know.

A. I could not testify as to when I got that knowledge. That is the best testimony I can give."

Mr. PERKINS testified (fols. 926–927, 931–934):

"Q. Did you purchase that stock upon your own account or did you purchase it as a broker, with a previous agreement
207 with the Northern Securities Company as to what should be done with it?

A. We had no previous agreement with any one save the Union Pacific people, who wanted us to make this transaction, which we finally completed for them. They were desirous of securing the Northern Securities stock.

Q. And at the time of the purchase from the Union Pacific interests it was understood that you were to turn this stock over to the Northern Securities Company, and the stocks and cash of the Northern Securities Company was to be turned over to you and by you to the Union Pacific interests?

A. If we could get it. If we could make the transaction. * * *

Q. What was your understanding or arrangement in case you had failed to make a deal with the Northern Securities Company for the turning in of all this stock to it; would you have had it on your hands—78,000,000 or $80,000,000 of preferred stock?

A. No, sir; the Union Pacific would have had it.

Q. So that in that transaction throughout your firm was acting as a broker for the disposition of that stock or for the turning of that stock in or for the sale of that stock to the Northern Securities Company, was it not?

A. I don't know that the word 'broker' is the proper word. I don't know what you would call it. We were negotiating for the Union Pacific for this transaction, a very common position for us to be in.

Q. I have no doubt of it. I understand that, Mr. Perkins, but you were negotiating a sale of that stock for the Harriman or Union Pacific interests.

A. For something else, if we could get that something else delivered.

Q. And if you had failed to make that sale to the Northern Securities Company you would not have had that stock on hand, but it would have belonged to the Union Pacific interests?

A. I suppose we might have, or take something else for it.

Q. It would have to be a new trade?

A. Further negotiations; yes, sir.

Q. Did your firm, as a matter of fact, agree absolutely to
208 take this stock from the Union Pacific interests and obligate yourselves for the purchase price, regardless of further negotiations with the Northern Securities Company?

A. Hardly, I should think."

Mr. STEELE testified (fols. 1158–1164):

"Q. What did your firm have to do with the purchase of the Harriman interests in the Northern Pacific, Mr. Steele?

A. My impression is it was my firm that conducted that negotiation entirely.

Q. Will you state what those negotiations were?

A. I will as nearly as I can, and I think I know the substance of them, Mr. Boutelle. It was after the meeting of the Northern Pacific board, as I recollect it, at which it was resolved that the preferred stock was to be retired. Whether the suggestion came from Mr. Harriman or not, I couldn't quite say, but the question was taken up between Mr. Harriman and ourselves as to the disposition of the Northern Pacific stock which they had.

Q. When was this, pardon me?

A. I think it was a little after the middle of November, after the meeting of the Northern Pacific board, at which it was resolved to retire the Northern Pacific stock. They expressed a desire to be allowed to part with their stock. It had become, or would become, by the retirement of the preferred stock, a minority interest, and it was rather an unsalable commodity, as the stock had practically been withdrawn from the market, and they asked us if we wouldn't undertake—I say they asked us, it came up between us, I am not sure which one suggested it—undertake to get the Northern Securities Company to buy their stock. We finally agreed upon a basis by which they agreed to sell their stock for a lump sum, which was to be payable partly in cash and partly in stock of the Northern Securities Company. At that time Mr. Harriman—I shall have to apologize whenever I say Union Pacific, because, I never really knew whether that was so—Mr. Harriman and his friends held both common and preferred stock, in the proportion, I think of about 37,000,000 common to 41,000,000 preferred, in round figures, and
209 their proposition was to sell us that stock in one block for a fixed sum which was to be paid partly in cash and partly in Northern Securities Company stock, and we undertook to try and get the Northern Securities Company to buy that stock on those terms, we acting as bankers between them.

Q. You acted, then, in that transaction, as I understand it, as middle man?

A. As bankers.

Q. That is, it was not a purchase outright by your firm?

A. No.

Q. Or a purchase in which your firm obligated themselves to pay a fixed amount of cash?

A. No; it was only a purchase by us if we succeeded in getting the Northern Securities Company to take it, and the terms were that we were to turn over just exactly what we got.

Q. You were really, then, in negotiation with the Northern Securities Company; you were really negotiating for the Union Pacific, or Harriman, or Short Line interests?

A. We were bankers in between. I wouldn't say we represented either side particularly. We were very often put in that position.

Q. You were financial agents and you were requested or instigated to make the transaction or attempt the transaction by the Harriman interests?

A. Well, we did undertake it for them.

Q. And at their request?

A. With their approval, at any rate."

Mr. CLOUGH testified (fols. 2610–2611):

"Q. The stock was purchased by J. P. Morgan & Co., and then turned over to you and you carried out the terms?

A. Yes, sir.

Q. The purchase as arrived at between J. P. Morgan & Co. and Harriman and Pierce was transferred to the Northern Securities Company, and the Northern Securities Company carried out the sale by direct dealing with Harriman and Pierce on the 18th day of November of last year.

Q. It issued to Harriman and Pierce some eighty-two millions of its own common stock?

A. Yes, sir."

210 And again (fols. 3125–3126):

"Q. Now, state whether the transfers were individual, absolute, without reservation, and without solicitation from the Northern Securities Company—fully?

A. To answer the first question, every purchase of stock that has been made by the Northern Securities Company, (whatever stock it may be) has been by direct individual transactions and negotiations with the owner of that stock except in the one instance that I have referred to in my previous testimony of the purchase of the Harriman and Pierce stock, where J. P. Morgan and Company negotiated the purchase and the purchase was assigned to the Northern Securities Company."

II.

Extracts from the Testimony of James J. Hill and William P. Clough in the Government Suit as to the Method of Conversion of the Northern Pacific Preferred Stock into Common Stock.

Mr. HILL testified (fols. 385–386):

"A. As soon as the notice was given to redeem the preferred stock of the Northern Pacific, my recollection is that a number of the pre-

ferred stockholders surrendered their stock, took their certificates for their common and converted them. Now, it may be, and I think quite likely, that that is what was done by Mr. Morgan or his firm with the Harriman preferred stock. I know that others did that."

And again (fols. 2741–2744):

"Q. Did you at that time take any account of what ought to be provided in case of your getting additional common stock for your preferred, on the retirement of the preferred.

A. That was considered. Those steps came one after another. They were considered, I should say, after the latter part of August, and prior to the organization of the company. One condition as it took shape called for a relative change in the plan of the stock, that is, an increase in the amount of the stock. I might answer that further, that Mr. Morgan, acting as he had been for the Northern Pacific for a great many years, since its reorganization, was very urgent that whatever was done for his shares, any other holder should have the same right. That had to be considered.

211 Q. In case of a retirement of the preferred stock of the Northern Pacific, to be replaced by common stock, if you had taken your proportion, you and the Morgan interest, your proportion of the new common stock, what what would have been the amount then of your holdings? You would have taken 75/80 of $42,000,000, I suppose?

A. Yes, sir.

Q. That would have brought you up to about in the neighborhood of 90,000,000, or about 80,000,000?

A. Yes, a little over 80; between 80 and 90.

Q. Now, what I wanted to get at was whether at this time, at the end of August, when you were fixing your proposed capital for the holding company, you took into account the increase of your holding which would or might result from a retirement of the preferred stock?

A. That had to be considered; it was considered."

And Mr. CLOUGH testified (fols. 2613–2618):

Q. Now, as to the purchaser of thirty-seven millions of common and of forty-one-odd millions of preferred stock of the Northern Pacific, the Northern Securities Company became entitled to do certain things. It became entitled, in the first place, did it not, to subscribe for convertible bonds?

A. If you will just let me explain that in my own way.

Mr. RICHARDS: Just strike out my question, Mr. Reporter, and let Colonel Clough go on and complete his statement.

WITNESS: By the terms of the resolutions of the Northern Pacific Railway Company retiring the preferred stock of that company it was provided that the holders of the then existing common stock of that

company of record at a certain future day, which I think now was the 10th of December, 1901, would be entitled to subscribe at par for convertible bonds that were to be issued by the Northern Pacific Railway Company in the process of retiring the preferred stock to the amount of 75/80 of their holdings in the existing common stock. All stock that was transferred on the record of the Northern Pacific Railway Company prior to the date of the closing of the books,
212 which, as I have stated before, as I remember, was on December 10, would carry with it this right of subscription, so that when the Northern Securities Company purchased the Harriman and Pierce stock, common stock, or any other common stock of the Northern Pacific, prior to December 10, with their purchase they got the right of subscription which the resolutions which I have mentioned gave. Now, does that explain it fully?

Q. Yes, that explains that portion of it. Now, as a matter of computation, 75/80 of 37,000,000 is about 34,000,000, isn't it?

A. Yes, sir; it is about 34,000,000. And I think that the subscription right which the Northern Securities Company exercised was obtained by it almost wholly from its purchase of the thirty-seven and odd millions of the Harriman and Pierce stock. Is that what you want to get at?

Q. That is it.

A. I haven't made the computation. I can make it in a minute, you know.

Q. Now, you have explained the right you acquired by the purchase of the common stock, but you have not explained the right you acquired by the purchase of the preferred stock of forty-one millions. What right did you acquire by that?

A. The right on the 1st day of January, 1902, to have that stock redeemed by the Northern Pacific Railway Company at par in cash.

Q. And was it redeemed at par at that time?

A. It was on the 1st day of January, 1902, all presented to the Northern Pacific Railway Company for retirement and was redeemed at par. The Northern Securities Company received from the Northern Pacific Railway Company on the 1st day of January, 1902, an amount in cash equal to the par of the preferred stock which it turned in.

Q. That amount substantially reimbursed you for those expenditures of cash, didn't it—within one or two million dollars?

A. That is a matter of computation easily made."

III.

Extracts from the testimony of James J. Hill, John S. Kennedy George W. Perkins, Charles Steele, J. Pierpont Morgan
213 William P. Clough, and Edward H. Harriman in the Government suit, that the Oregon Short Line interests were not represented among those who participated in the organization of the Northern Securities Company.

Mr. HILL testified (fols. 346–347, 365–366, 376, 389):

"Q. Who finally decided upon the plan that was adopted in the organization of the Northern Securities Company

A. Practically, Mr. Kennedy, Mr. George Baker, Mr. James, Mr. Thorne, Mr. Clough, Mr. Perkins, and myself.

Q. And were there no others, than those whose names you have just given, who had anything to do with the actual perfecting of the plan of organization of the Northern Securities Company?

A. No one outside of the counsel who drew the papers. I think I had as much to do with it as anybody." * * *

"Q. Mr. Hill, at the time when the Northern Securities Company was decided upon, which took place some time in the summer of 1901 at that time, to your knowledge, were there any negotiations being carried on, or had been carried on prior to that time, with Mr. Harriman, or with persons representing Mr. Harriman or the Oregon Short Line, looking to the purchase of the entire holdings of the Union Pacific or the Oregon Short Line, or Mr. Harriman?

A. There was absolutely no such negotiations, directly or indirectly, and I think there could not have been any without my knowing it." * * *

"Q. I will ask you this, Mr. Hill: Do you know whether or not there was an agreement for the sale of this stock previous to November?

A. I know of no such agreement. I think and feel certain that if any such agreement had been made I would have known something of it." * * *

"Q. Now, Mr. Hill, was there any connection whatever between the organization of the Northern Securities Company and the purchase of the Harriman stock? That is, taking those two things together, was there any connection between those two things and the selection of Mr. Morgan as arbitrator to name the board of directors of the Northern Pacific Railway Company?

A. There was absolutely no connection whatever."

214 Mr. KENNEDY testified as to the organization of the Northern Securities Company (fol. 862):

"Q. Do you know whether it had any relation or anything to do with the purchase of the Harriman stock?

A. Not so far as I know. I believe it had not, and never heard of such a thing."

Mr. PERKINS testified (fol. 911–913):

"Q. Mr. Perkins, had the firm of J. P. Morgan & Co. any agreement or understanding with either Mr. Harriman, Mr. Schiff, or the officers of the Union Pacific, or of the Oregon Short Line, for that purchase prior to the formation of the Northern Securities Company?

A. Not to my knowledge. I believe not.

Q. Had you any personal knowledge of the negotiations which led up to the actual purchase which you have described?

A. Yes, sir.

Q. You were selected by members of your firm?

A. I conducted those negotiations.

Q. Now, when did they commence?

A. I cannot give you the date, but after the Northern Securities Company was organized and in existence.

Q. And no negotiations, to your knowledge, were had by your firm with either Mr. Harriman or Mr. Schiff, or any of the officers of the Union Pacific or the Oregon Short Line prior to the actual formation and incorporation of the Northern Securities Company?

A. Not to my knowledge; no, sir."

Mr. STEELE testified (fols. 1204–1205):

"Q. I understand you, Mr. Steele, that when the Northern Securities Company was organized, the so-called Harriman stock had not been purchased by you, or by any one for that company?

A. It had not been purchased by us.

Q. And, so far as you know, no arrangements for this sale to the Northern Securities Company had ever been made?

A. No, sir.

Q. Well, was there, so far as you know, any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?

215 A. None whatever."

Mr. MORGAN, cross-examined by his counsel, Mr. Stetson, testified (fol. 1444):

"Q. Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation?

A. Not until after."

And Mr. HARRIMAN testified (fol. 3592):

"Q. Were you consulted at all regarding the formation of this holding company?
A. No, sir.
Q. You didn't know whether it was going to be organized?
A. No, sir.
Q. And had nothing to do with it?
A. No, sir."

Mr. CLOUGH testified (fols. 3297–3298):

"Q. I repeat the question: Before you reached the conclusion to take out a New Jersey charter, Mr. Morgan's interests and the Great Northern interests had agreed to place their holdings in a common corporation?
A. Before that was done, as I have stated before, the gentlemen who were stockholders of the Great Northern and who also held stock of the Northern Pacific, and Mr. Morgan himself (the holdings of Great Northern being, I think it was, about 33 millions and of the Northern Pacific about 42 millions all together, somewhere in that neighborhood, about 40 or 42) had decided that they would sell their stocks to the new company when created. Now, it was after that decision relating to those stocks and, as I said, only a few days before the articles of incorporation were actually filed, that the conclusion was ultimately reached to incorporate under the laws of the State of New Jersey."

IV.

Extracts from the testimony of James J. Hill, John S. Kennedy, and J. Pierpont Morgan in the Government suit, going to
216 show that the Hill-Morgan party, in forming the illegal combination, were actuated by fear of competition on the part of the interests represented by Harriman and Pierce, and that the primary object of the combination was to defeat such competition.

Mr. HILL testified (fols. 328–331):

"A. The action in buying the majority of the stock of the Northern Pacific in the market in April or May, or both, brought the question up more strongly than before as to the necessity of the Great Northern old shareholders who had been continuously connected with the property from the beginning making their holding together permanent, and, I think, in June, somewhere about the 5th or 6th of June, speaking from recollection, Mr. Kennedy, on his return from Europe, discussed the matter with me, going over the entire situation, the relations of the Burlington; the relations growing out of the Burlington; the relations growing out of the large purchases by the Union Pacific interests of the Northern Pacific,

and suggested whether we should not include in our holding company our holdings in the Northern Pacific.

Q. And for the same purpose?

A. For the same purpose, so that we would all act together and no one would sell out or leave the others. We would all act together.

Q. For the purpose of unifying the interests that you had in the two roads?

A. Yes, sir; for the purpose of unifying the interests in each road; because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company it was a matter of great consequence to the Great Northern as to who would own the stock of the Northern Pacific or control the Northern Pacific, and some of the shareholders—some of them are 86 years old, others are more than 80, and so on—they might have concluded that they would sell their stock, and it might have made a difference as to the majority of the common stock.

Q. Of the Northern Pacific?

A. Of the Northern Pacific, if the control of the Northern Pacific passed to the Union Pacific, as a matter of influence. The
217 control of the Great Northern would have passed to the Union Pacific because we would not have held it a day longer than we could have sold it."

And again (2724–2727):

"Q. Do you remember the date when the resolution of the board of directors of the Great Northern Company was passed authorizing the purchase——

A. I couldn't give the exact date.

Q. —of the Burlington stock?

A. I couldn't give the exact date. It would be in the month of April.

Q. You were present at that meeting?

A. Yes, sir.

Q. State whether or not a suggestion was made at that meeting that, in order to protect the Great Northern Company, the control of the Northern Pacific common stock should be acquired in its interest.

A. As I remember it, one of the directors raised a question that inasmuch as the purchase of the Burlington stock and the creation of a bond to pay for it involved the joint and several liability of the entire amount of the purchase, it was a matter of consequence to the Great Northern to know that the Northern Pacific would not pass into the hands of people who might be interested in other directions, in developing in other directions or other sections of the country; and I remember I answered that with what myself and friends held at that time, and what Morgan & Company held we

would have somewhere in the neighborhood of 35 or 40 millions of the stock out of a total of 155 millions, which was larger than is usually held in any of the large companies. I did not think at the time that it was at all likely that anybody would undertake to buy in the market the control of 155 millions of stock."

And again (fols. 2748–2753):

"Q. What was the purpose after the purchase of the Burlington Company and after the very large purchases of Northern Pacific stock made in the Union Pacific interests,—what was the purpose after that time of you gentlemen who promoted the Northern Securities Company in forming that company and putting into it a majority of the stock of the Northern Pacific Company?

218 A. We were particularly anxious to put a majority of that stock where it could not be raided again as it had been. We wanted to put it in a corporation that was not a railroad company,—a company that would hold it as an investment, and the larger the company the more difficult it would be to secure a majority of it. Then again, a reason why we preferred an investment company: Railroad charters, I think I may say almost entirely, are drawn or granted on terms that do not permit railroad companies to buy the shares or own the shares of investment companies. Railway companies, under certain conditions, can buy the shares of other railways, as a means of consolidation, or they might buy the shares of a road that they would otherwise build. We were advised that we would be safer with the shares held by an investment company, the stock of which could only be held by individuals or by corporations that were not railway companies, and to that extent we would be more free from such raids by interests that were anxious to destroy or restrict the growth of this country,—such raids as had been made by the Union Pacific interests, so-called.

Q. What injury did you consider was likely to result to the stockholders of the Great Northern Company or the stockholders of the Northern Pacific Company, or to those corporations, if a majority of the stock of the Northern Pacific or a controlling interest in that company should be obtained by a hostile railway interest?

A. With the Northern Pacific as a half owner in the shares of the Burlington and responsibility for one-half of the purchase price of these shares, the transfers of the shares of the Northern Pacific or the control of the Northern Pacific to an interest that was adverse or an interest that had greater investments in other directions, the control being in the hands of companies whose interests would be injured by the growth and development of this country would, of course, put the Great Northern in a position where it would be almost helpless, because we would be, as it were, fenced out of the territory south which produces the tonnage we want to take west and which consumes the tonnage we want to bring east, and

219 the Great Northern would be in a position where it would have to make a hard fight—either survive or perish, or else

sell out to the other interests. The latter would be the most business-like proceeding."

Mr. KENNEDY testified (fols. 773–774, 779–780):

"A. It was our intention to have a majority of the Northern Pacific, but as to the Great Northern, it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or minority.

Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern, Mr. Kennedy?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subject to such an attack as took place last year.

Q. You wanted to have a majority of the stock of the Northern Pacific where you could absolutely control it?

A. Yes, sir.

Q. Under all circumstances?

A. Under all circumstances." * * *

"Q. Didn't you hear any reference made by any of your friends, or by Mr. Hill's associates, with reference to the object and purpose of preventing another attack on either the Great Northern or the Northern Pacific?

A. I remember that being talked of in connection with the Northern Pacific, but I have no recollection of it in connection with the Great Northern.

Q. It was a fact, Mr. Kennedy, that so far as your own feelings went you were perfectly satisfied that a successful attack could not be made on the Great Northern?

A. I was satisfied of this, that if we held the controlling majority of the stock of the Northern Pacific the chances were remote that they would make an attack on the Great Northern."

And Mr. MORGAN testified (1341–1346):

"Q. We have heard a little in this court room about a contest some time last May for the purchase of the Northern Pacific stock. When did you first hear that somebody else was trying to buy the stock of the Northern Pacific?

220 A. Do you mean the Union Pacific interest?

Q. Yes. When did you hear of that?

A. Oh, it must have been about the last of April or the first of May.

Q. Not before then?

A. I didn't hear they were trying to buy it. I heard that it was understood, and, in fact, thought it practically settled, that they had control when it came to me. It was not an imaginary fact; it was a complete transaction, as I was informed. There was no contest in the matter.

Q. I was alluding now to the famous 9th of May.

A. That was after it was bought. That was when the thing was done.

Q. Now, directly, you heard that the Union Pacific interest—you understand when I refer to them it means Harriman or the Oregon Short Line?

A. I don't understand anything of the kind. I know nothing about that. I know no man, woman or child, except the Union Pacific interests. I don't know what Mr. Harriman did. I don't want to be misunderstood. When I speak of the Union Pacific interests it may have been Mr. Harriman, or Mr. Pierce, or Mr. Schiff, or somebody else. I know nothing about the names. I only know I heard in Aix, where I was, that the Union Pacific interests had acquired control of the Northern Pacific.

Q. And you, having been the fiscal agent of the Northern Pacific, took steps at the same time to protect the control of the road, undoubtedly?

A. In that connection I will tell you that part of it here now.

Q. You might just as well.

A. When I heard that, I felt in this position: We had reorganized the Northern Pacific. We had placed all the securities of the Northern Pacific, and I knew, as I had always supposed, that there were people—friends of ours and other people—who held practically enough Northern Pacific—we always supposed we had with us people upon whom we could depend to protect our moral control of the property—and consequently when that news came to me I hadn't any doubt about the fact of the matter, and at the same time
221 this news came so strong, whoever had acquired it, I felt something must have happened. Somebody must have sold. I knew where certain stocks were, and I figured it up. I feel bound in all honor when I reorganize a property and am morally responsible for its management to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I knew we had a majority of common stock, and I knew that actually gave us the control, and they couldn't take the minority and have it sacrificed to the Union Pacific interests." * * *

And again (fols. 1372–1375):

"Q. And then you had that in your own mind to have a holding company for the Northern Pacific.

A. That came up after I came back. When we found ourselves in this position, with the danger, having escaped as I thought at that time from what I thought was a great danger; that is to say our property being absorbed by a competing line without our knowledge or consent, it occurred to me something ought to be done to prevent that, because, while we chose to defend the property, I did not want to go on indefinitely, and I thought the best plan was to go to some trust company. My idea was first to go to some trust company to take the Northern Pacific stock and hold it?

Q. That is, to hold control?

A. Hold control of the stock. Just to surrender it to them and take their receipt.

Q. For the purpose of keeping control in one place?

A. No; not alone to keep it in one place, but to keep it so that the policy of the company upon which its future depended could be continued. We didn't want convulsions going on. You cannot take a company with three or four hundred millions of securities and do one thing one day and another thing another. It destroys confidence in the first place, and everything of that kind. What I wanted to accomplish was to put that stock so that it could be protected—to maintain the policy of the company as it then existed.

Q. Held in one hand, in other words?

A. No; not in one hand, because it could be held in third
222 hands. I wanted it so that I could go to Europe and not hear next day that somebody had bought it for the Boston and Maine, or I don't know what other company. I wanted the Northern Pacific stock put where nothing could interfere with the policy I had inaugurated and for the carrying out of which we were perfectly satisfied and morally responsible."

Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

vs.

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Affidavit of William Mahl.

(Filed May 20, 1904.)

UNITED STATES OF AMERICA, State and County of New York, } ss:

William Mahl, being duly sworn, deposes and says:

I. I reside in the city, county and State of New York and for several years have been comptroller of complainant, Oregon Short Line Railroad Company and of other railroad companies and have had many years' experience as an accountant, auditor and comptroller.

II. On the 12th day of May, 1904, at the request of Mr. E. H. Harriman, president of the Oregon Short line Railroad Company, I I examined, in the office of the Northern Securities Company, entries in the journal, ledger and cash book of said company relating to the shares of the capital stock of the Northern Pacific Railway Company deposited with said Securities Company on November

18th, 1901, by E. H. Harriman and Winslow S. Pierce who held the same for said Oregon Short Line Railroad Company. The books of said Securities Company were produced for such examination by Mr. Edward T. Nichols, the secretary of
223 said company who was present during the examination. On the 13th day of May, 1904, I examined at the office of the Northern Pacific Railway Company in New York city entries in the cash book of said railway company relating to the conversion of the preferred stock of said railway company of the aggregate par value of $41,085,000, delivered by said Harriman and Pierce to said Securities Company, which book was produced for such examination by Mr. George H. Earl, secretary and assistant treasurer of said railway company, who was present during such examination. I was unable to examine the ledger and journal of the Northern Pacific Railway Company because I was informed by Mr. Earl that said books were kept in St. Paul, Minnesota, and that his books pertained only to cash transactions.

III. I found that the books of the Northern Securities Company show that said company received from E. H. Harriman and Winslow S. Pierce the $37,023,000, par value of the common stock and $41,085,000, par value of the preferred stock of the Northern Pacific Railway Company referred to in the original and amended bills of complaint in this suit. Upon such books is an account styled "Investment account No. 1," which purports to show the preferred stock of the Northern Pacific Railway Company held by said Securities Company and another account styled "Investment account No. 2" purporting to show the common stock held by said Securities Company and another account styled "Investment account No. 3" showing stock of the Great Northern Railway Company held by said Securities Company. Upon the journal of said Securities Company there are two entries reading as follows:

1901, Nov'b'r 18th.

Investment Account No. 1—To Capital Stock a/c.

For 410,850 shs. N. P. pfd. stock bought from E. H. Harriman and Winslow S. Pierce for.....	$41,085,000
Less paid in cash as per entry in cash book this day.....	8,915,629
Balance paid in stock.....,	32,169,371

Say 321,693 shs. & $71. scrip issued as fully paid up stock @ par."

224 " Nov'b'r 18.

Investment Account No. 2—To Capital Stock a/c.

For 370,230 shs. North'n Pac. common stock purchased from E. H. Harriman & Winslow S. Pierce with the rights conferred thereon by resolution of the directors of the N. P. Ry. Co. adopted Nov. 13th, 1901, and paid for with 503,225,087½ shs. capital stock of Northern Securities Co. issued as fully paid up stock @ par..... 50,322,500.87½"

These entries appear to have been regularly carried into the capital and investment accounts of the Securities Company. I was informed by Mr. Nichols that the charges of $32,169,371, and of $50,322,500.87½ on account of the preferred and common stock of the Northern Pacific Railway Company referred to in said entries were merely an arbitrary apportionment of the cost of the entire stock received from Harriman and Pierce.

The only preferred stock of the Northern Pacific Railway Company which was ever deposited with the Northern Securities Company or passed into its possession, so far as I was able to ascertain from said books was the $41,085,000. par value delivered to it by complainants Harriman and Pierce.

IV. The books of said Securities Company show that the alleged retirement of $34,703,000 of said preferred stock, the purchase of $34,709,062.50 of the convertible bonds or "convertible certificates of indebtedness" of the Northern Pacific Railway Company and the conversion of said bonds into the common stock of said railway company referred to in the affidavit of Edward T. Nichols, verified on the 2 day of May, 1904, occurred on the same day, to wit, the 27th day of December, 1901, and appear to have been different parts of and together constituting actually but one transaction. There is an entry upon the journal of the Northern Securities Company showing that on December 27, 1901, it paid to the Northern Pacific Railway Company $34,709,062.50 for the "convertible certificates of indebtedness" of said railway company issued in the process of converting its preferred stock into common stock. I asked to see the cheque with which such payment was made and was shown by said Edward T. Nichols the original cheque which was dated December 27, 1901, was drawn by said Northern Securities Company upon J. P. Morgan & Co. in favor of the Northern Pacific Railway Company and was endorsed by said railway
225 company for payment to the order of J. P. Morgan & Co. A true copy of said cheque and of the endorsement thereon is annexed hereto as Exhibit No. 1. Said cheque was marked paid December 27, 1901. There was upon the cash book of said Securities Company an entry showing that said company received on the 27th day of December, 1901, from the Northern Pacific Railway Company $34,709,000. to pay off and retire that amount of the

$41,085,000. preferred stock of said railway company delivered to said Securities Company by complainants Harriman and Pierce. I was informed by said Edward T. Nichols that said payment was made by the cheque of said railway company. Subsequently upon my request I was shown said cheque by George H. Earl, the assistant treasurer of the Northern Pacific Railway Company. It was dated December 27, 1901, was drawn by said railway company upon J. P. Morgan & Co. in favor of the Northern Securities Company and was endorsed by said Securities Company for payment to the order of J. P. Morgan & Co. and was marked paid December 27, 1901. A true copy of said cheque and of the endorsement thereon is annexed hereto and marked Exhibit No. 2. I also saw in the books of said companies entries showing that on December 27, 1901, the "convertible certificates of indebtedness" of the Northern Pacific Railway Company of the face value of $34,709,062.50 purporting to have been bought as above stated on December 27, 1901, were on the same day converted into the common stock of the Northern Pacific Railway Company. Upon an examination in the office of George H. Earl, assistant treasurer of the Northern Pacific Railway Company, made by me as aforesaid on the 13th day of May, 1904, I found that a "temporary certificate for common stock" No. 2 for 347,090 shares dated December 27, 1901, was issued to the Northern Securities Company in exchange for $34,709,062.50 of the convertible certificates of indebtedness of said railway company. Said temporary certificate No. 2 is marked "cancelled January 11, 1901, J. P. M. & Co." and has noted thereon "exchanged for engraved certificate." I was informed by Mr. George H. Earl, assistant secretary and treasurer of the Northern Pacific Railway Company that in converting $34,709,000. of the preferred stock of the Northern Pacific Railway Company into new common stock the Securities Company subscribed for $34,709,062.50 convertible bonds "so as to put the railway company in funds with which to pay for the same amount of preferred stock" and that thereupon the railway company drew its cheque in favor of the Securities Company for
226 $34,709,000. to pay for preferred stock for that amount. Mr. Earl informed me that a special bank account was kept exclusively for the transactions in connection with the conversion of the preferred stock and the cheques drawn against said account were headed "Retirement of preferred stock of Northern Pacific Railway Company." The account was kept with J. P. Morgan & Co. It appears to have been opened on the 26th day of December, 1901, the deposits during the 26th and 27th days of December, 1901, aggregated $36,269,287.50 of which the cheque of the Northern Securities Company above referred to for $34,709,062.50 was a part, while the cheques drawn against said account during said 26th and 27th days of December amounted to $35,671,500. which included the cheque for $34,709,000. drawn in favor of the Northern Securities Company on the 27th of December, 1901, as above stated.

V. The journal of the Northern Securities Company contains an entry under date of January 2, 1902, which reads as follows:

"1902, Jan'y 2.

Bills Payable to Investment Account No. 1.

For proceeds of 63,760 shs. North. Pac. pfd. stock handed to J. P. Morgan & Co. of collection from N. P. Ry. Co. @ par J. P. M. & Co. collected same and applied proceeds in liquidation of their loan of $9,000,000 Nov'b'r 18th, 1901, to Northern Securities Co. See J. P. M. & Co.'s letter of Jan'y 2nd, 1902, as authority for this entry..... $6,376,000.00"

Upon my request therefor said Edward T. Nichols exhibited to me the letter from J. P. Morgan & Co., dated January 2, 1902, which contained a reference to the subject of the above entry as follows: "We are also crediting your account today with $6,376,000. proceeds of 63,760 shares Northern Pacific preferred stock retired." Upon inquiry on May 13, 1904, of said George H. Earl, I was informed that the said sum so collected by the said Morgan & Co. was included in a cheque drawn by said railway company in favor of J. P. Morgan & Co. and upon J. P. Morgan & Co., dated December 30, 1891, for $9,251,800. A memorandum on the cheque book of said railway company showed that such cheque was given to retire the preferred stock of said railway company but did not show the individuals in whose names such shares were standing. A copy of said cheque is annexed hereto as Exhibit No. 3.

VI. I was informed by counsel for complainant that it was
227 necessary that the affidavit giving the result of my examination must be prepared in time to be served May 16, 1904, and therefore I did not have time to and did not make an examination of all of the entries in the books of the Northern Securities Company or Northern Pacific Railway Company relating to the holding by the Securities Company of the stock of the Northern Pacific Railway Company nor did I examine the said books in any respect except as herein stated. I made no examination of the stock records and transfer books of either of said companies.

WM. MAHL.

Subscribed and sworn to before me this 16th day of May, 1904.

[L. S.] J. B. MAXWELL,
Notary Public No. 51, New York County, New York.

EXHIBIT No. 1.

No. 21. NEW YORK, December 27th, 1901.

J. P. Morgan & Co.

Pay to the order of Northern Pacific Railway Co. thirty-four million seven hundred nine thousand and sixty-two 50/100 dollars.

NORTHERN SECURITIES CO.,
By W. P. CLOUGH, 4th Vice Pres't.
EDW'D T. NICHOLS, Treasurer.

$34,709,062.50.

[Copy of endorsement on back.]

Pay to the order of J. P. Morgan & Co. Northern Pacific Railway Company.

GEO. H. EARL,
Ass't Treasurer.

228 EXHIBIT No. 2.

"Redemption of Preferred Stock of Northern Pacific Railway Company.

No. 5. NEW YORK, Dec. 27, 1901. $34,709,000.

J. P Morgan & Co.

Pay to the order of Northern Securities Company thirty-four million, seven hundred nine thousand no/— dollars.

NORTHERN PACIFIC RAILWAY COMPANY,
By GEO. H. EARL, Assistant Treasurer."

Countersigned:
D. S. LAMONT,
Vice President."

[Copy of endorsement on back.]

"Pay to the order of J. P. Morgan & Co.
EDW. T. NICHOLS, Treas'r."

EXHIBIT No. 3.

Redemption of Preferred Stock of Northern Pacific Railway Company

No. 177. NEW YORK, Dec. 30, 1901. $9,251,800.

J. P. Morgan & Co.

Pay to the order of J. P. Morgan & Co. nine million two hundred fifty one thousand, eight hundred no / 100 dollars.

NORTHERN PACIFIC RAILWAY COMPANY,
By GEO. H. EARL, Assistant Treasurer.

Countersigned:

D. S. LAMONT,
Vice President.

229 Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

vs.

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC Railway Company, Defendants.

Affidavit of Otto C. Kahn.

(Filed May 20, 1904.)

UNITED STATES OF AMERICA, State, County, and City of New York, } ss:

Otto C. Kahn, being duly sworn deposes and says:

I. I am the transfer agent of the Union Pacific Railroad Company, and its affiliated companies, and was appointed transfer agent in October 1898, since which time I have had charge of the issue and transfer of the capital stock of said companies, and am and have been for many years familiar with the method of issuing and transferring stocks. I have read the affidavit herein of Alexander Millar, verified the 20th day of April 1904, and concur in the statement made by him in the fourth paragraph thereof, that it is "entirely feasible and a common occurrence to trace the origin of a certificate of stock outstanding and to show to whom the first issue of the stock was made and for what consideration, and to whom it

has subsequently been transferred, no matter how many transfers have been made in the meantime."

II. On May 13, 14 and 16, 1904, I examined the books of the Northern Securities Company. In the time at my disposal, I was unable to make a full and complete examination of said books, as it would require a great deal of time to make a thorough and sufficient examination thereof.

I have read the affidavit filed in this suit verified by Edward T. Nichols on the 2nd day of May, 1904, in which he speaks of the transfers of the certificates of stock of the Northern Securities Company, and I do not agree with the statement made by him that

"whenever the stock of the company represented by a cer-
230 tificate has passed through collective transfers, it cannot be traced back to any original issue without making arbitrary assumptions." I have carefully noted the tracings by him in said affidavit of the last certificate of the stock of the Northern Securities Company issued April 18, 1904, for fifty shares and numbered B–6673. I have also carefully examined the transfers of this certificate of stock on the books of the Northern Securities Company. In my opinion, there is no room for any arbitrary assumption as to the original issue to which such certificate can be traced. The certificate can, in my opinion, be traced directly through the various transfers to the original certificate of stock for 50 shares numbered A–437, for 36,656 shares issued against Northern Pacific stock.

The apparent difficulty suggested by Mr. Nichols lies in the tracing of the certificate through the transfer of stock of December 14, 1903, which appears as follows on the books of the Northern Securities Company:

Date.	Certificates surrendered.			Certificates issued.		
	Ctf. No.	Shares.	Standing in name of	Ctf. No.	Shares.	Issued in name of
1903. Dec. 14	36116-7	200	Paul Dana, adm'r estate Eunice M. Dana.	B—6116-19	200	Paul Dana, adm'r estate Eunice M. Dana.

The foregoing is an abbreviated form of the following entry:

Date.	Certificates surrendered.			Certificates issued.		
	Ctf. No.	Shares.	Standing in name of	Ctf. No.	Shares.	Issued in name of
1903. Dec. 14	36116	100	Paul Dana, adm'r estate Eunice M. Dana.	B—6116	50	Paul Dana, adm'r E. M. D. est.
				B—6117	50	Paul Dana, adm'r E. M. D. est.
	36117	100	Paul Dana, adm'r estate Eunice M. Dana.	B—6118	50	Paul Dana, adm'r E. M. D. est.
				B—6119	50	Paul Dana, adm'r E. M. D. est.

The first two certificates on the credit side of the account numbered B–6116 and B–6117 represent the stock represented by the first certificate on the debit side of the account, viz., certificate 36116 for 100 shares of the stock of the Northern Securities Company.

If the entry of certificate 36116 had been at the bottom of the page of the stock book, and if the entry of certificate 36117
231 had been at the top of the next page of the stock book, Mr. Nichols would probably have no hesitation in saying that the certificates B–6116 and B–6117 for 50 shares each represented the stock which had theretofore been represented by the 100 share certificate 36116 opposite thereto; and no one would have doubted but that the certificates B–6118 and B–6119 for 50 shares each on the credit side of the stock book opposite the entry of certificate 36117 originated from said certificate 36117. The fact that the certificates surrendered were entered upon the same page in the stock book would make no difference whatever as to the tracing the new certificates to their original issue, inasmuch as it is well understood by all transfer agents and persons familiar with the keeping of such books and the methods of issuing and transferring stock that the new certificates of stock upon the credit side of the stock book represent the original certificates for the same amount on the debit side of the stock book opposite thereto. In other words, in such a case as that suggested by Mr. Nichols, the two new certificates for 50 shares each which are *first entered in the stock book* represent the old certificate for 100 shares which is also *first entered therein*.

III. While I have been unable in the short time at my command to make an exhaustive and sufficient examination of the books of the Northern Securities Company, yet from such examination as I have had an opportunity to make, I find that such a situation as that suggested by Mr. Nichols was of comparatively rare occurrence in all the transfers of the stock of the Northern Securities Company, and even if Mr. Nichols had been correct in his statement that the stock transferred, as in the illustration given by him, could not be traced back to any original issue without making arbitrary assumptions (which statement I deny), yet such a contingency has occurred so seldom in the transfers of the shares of the stock of the Northern Securities Company that it is a matter of little significance when compared with the great mass of transfers of stock.

IV. In the affidavit of Mr. Nichols above referred to, he states that "the Northern Securities Company has made purchases as one transaction, from the same persons, of both Northern Pacific and Great Northern stocks in varying amounts, and has issued and delivered in payment therefor certificates of its own stock aggregating such purchase price, but in no way specifically related to the purchase price of either one or the other of said railway stocks."

I find on examining the books at the office of the Northern
232 Securities Company that in addition to the transfer books, there are two books of original entry, one called the

"Northern Pacific Record" and the other the "Great Northern Record," showing the original deposit of the stock of the said companies and the issue of certificates of stock of the Northern Securities Company in return therefor. I have examined these two books of original entry, and find that the statement of Mr. Nichols just quoted is not strictly accurate, and that there is only a single instance of the purchase *as one transaction* of both Northern Pacific and Great Northern stock, and in this instance, there were no "persons" concerned, but only a single person—Mr. James J. Hill.

OTTO C. KAHN.

Subscribed and sworn to before me this 16th day of May, 1904.

[L. S.] CHARLES FRANKLIN,
Notary Public No. 69, New York County.

Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
versus
NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Affidavit of Winslow S. Pierce.

(Filed May 20, 1904.)

UNITED STATES OF AMERICA,
Southern District of New York,
State, County, and City of New York, } *ss:*

Winslow S. Pierce, being duly sworn, deposes and says:

Referring to my affidavit, verified May 16, 1904, in this suit, my attention has been called to the fact after the arrangement with Messrs. J. P. Morgan & Co. to accept shares of the holding
233 company for the Northern Pacific stock held by the Oregon Short Line Company, as stated in Mr. Harriman's affidavit of May 16, 1904, and shortly before the organization of the Northern Securities Company (the exact date I do not recollect), I attended a meeting at which were present counsel representing Mr. Hill and his associates, counsel representing Messrs. J. P. Morgan & Co., and counsel representing the Oregon Short Line interests. At such meeting a form of certificate of incorporation of a holding company was submitted by counsel representing Mr. Hill and was discussed. The form thus submitted and discussed was to the best of my recol-

lection substantially the same as that subsequently used in the incorporation of the Northern Securities Company. The formation of the holding company had been previously decided upon by interests other than our own and in the decision to form such a company I had no part.

WINSLOW S. PIERCE.

Subscribed and sworn to before me this 19th day of May, 1904.

[L. S.] JAMES L. MOCK,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

Mandate.

(Filed June 15, 1904.)

UNITED STATES
vs.
NORTHERN SECURITIES COMPANY.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the [SEAL.] district of Minnesota, Greeting:

Whereas, lately in the circuit court of the United States for the district of Minnesota, before you or some of you, in a cause between The United States of America, complainant, and The Northern Securities Company, The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, William
234 P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel S. Lamont, defendants, No. 789, in equity, wherein the decree of the said circuit court, entered in said cause on the 9th day of April, A. D. 1903, is in the following words, viz:

"This cause came on to be heard at this term and was argued by counsel (Hon. Philander C. Knox, the Attorney General, Mr. D. T. Watson, special counsel, Mr. James M. Beck and Mr. W. A. Day, assistant attorneys general and Mr. John M. Freeman, appearing for the United States, and Mr. George B. Young, Mr. John W. Griggs, Mr. M. D. Grover, Mr. C. W. Bunn, Mr. Francis Lynde Stetson and Mr. David Willcox, appearing for the defendants); and thereupon, upon consideration of the evidence and the arguments.

"It was ordered, adjudged and decreed as follows, to-wit.

"That the defendants above named have heretofore entered into a combination or conspiracy in restraint of trade and commerce among the several States, such as an act of Congress, approved July

2, 1890, entitled an 'An act to protect trade and commerce against unlawful restraints and monopolies' denounces as illegal.

"That all the stocks of the Northern Pacific Railway Company and all the stock of the Great Northern Railway Company, now claimed to be owned and held by the defendant, The Northern Securities Company, was acquired and is now held by it in virtue of such combination or conspiracy in restraint of trade and commerce among the several States.

"That the Northern Securities Company, its officers, agents, servants and employés be and they are hereby enjoined from acquiring, or attempting to acquire further stock of either of the aforesaid railway companies;

"That the Northern Securities Company be enjoined from voting the aforesaid stock which it now holds or may acquire and from attempting to vote it, at any meeting of the stockholders of either of the aforesaid railway companies and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies or either of them by virtue of its holding such stock therein.

"That the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants and agents be and they are hereby respectively and collectively enjoined from permitting the stock aforesaid to be voted by the
235 Northern Securities Company, or in its behalf, by its attorneys or agents at any corporate election for directors or officers of either of the aforesaid railway companies.

"And that they, together with their officers, directors, servants and agents, be likewise enjoined and respectively restrained from paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold;

"And that the aforesaid railway companies, their officers, directors, servants and agents, be enjoined from permitting or suffering the Northern Securities Companies or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies.

"But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said, The Northern Securities Company, may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignments of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies.

"It is further ordered and adjudged that the United States recover from the defendants its costs herein expended, the same to be taxed by the clerk of this court, and have execution therefor.

"HENRY C. CALDWELL,
"Presiding Judge,
"WALTER H. SANBORN,
"AMOS *N.* THAYER,
"Circuit Judges."

as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and three, the said cause
236 came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby affirmed, with liberty to the circuit court to proceed in the execution of its decree as the circumstances may require.

March 14, 1904.

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of April, in the year of our Lord one thousand nine hundred and four.

(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Prudential Building, 763 Broad Street,
NEWARK, N. J., June 14, 1904.

Hon. Edward G. Bradford, Wilmington, Del.

DEAR SIR: I send you herewith a certified copy of the mandate of the Supreme Court in United States *vs.* The Northern Securities Company. Mr. Johnson telegraphs me his consent that the mandate and the decree, which is embodied in it, shall be considered by the court on the application for a preliminary injunction in the Harriman case and you may take this letter as *as* giving our consent and also our consent that it be filed as an exhibit on behalf of the complainants.

I am yours truly, R. V. LINDABURY.

Enclosure.

Received Hotel Wilmington, Wilmington, Del.
6 P MB SN 18 paid 6/11/4
Phila 11

Edward G. Bradford, U. S. circuit court, Wilm'n:

I have written landabury expressing entire acquiescence and have asked him to forward copy of decree and mandate.

JOHN G. JOHNSON 1129 AM

237 Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company, Complainants,
against
NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Affidavit of Edward T. Nichols.

(Filed May 20, 1904.)

STATE OF NEW YORK, City and County of New York, } *ss:*

Edward T. Nichols, of full age came before me this day and having been first duly sworn, did depose and say: I am secretary of the said defendant Northern Securities Company. Annexed hereto are true copies of portions of volume 1 of "Transcript of Record, Supreme Court of the United States, October term, 1903, No. 277, The Northern Securities Company and others, appellants, *vs.* The United States," on appeal from the circuit court of the United States, from the district of Minnesota; said portions being depositions and testimony of Edward H. Harriman and W. P. Clough, respectively, introduced and read in evidence in the said suit, as appears upon said copies.

EDW. T. NICHOLS,

Subscribed and sworn to before me this 2nd day of May, A. D. 1904.

FRANCIS M. KELLER,
[L. S.] Notary Public, N. Y. C.

Depositions of E. H. Harriman.

Testimony of Edward H. Harriman, given before the Interstate Commerce Commission, at Chicago, Illinois, on January 25, 1902, and introduced in evidence by the plaintiff in the suit of The United States of America *vs.* Northern Securities Company and others, in the circuit court of the United States for the district of Minnesota.

238 EDWARD H. HARRIMAN, being duly sworn, testified as follows:

Mr. Day: Please give the stenographer your full name.

Mr. Harriman: Edward H. Harriman.

Mr. Day: And state your official relations to the Union Pacific railway.

Mr. Harriman: Chairman of the executive committee.

Mr. Day: Of the board of directors?

Mr. Harriman: Of the executive committee, and a member of the board of directors.

Mr. Day: And your official relations to the Oregon Short Line?

Mr. Harriman: President.

Mr. Day: And the Oregon Railway and Navigation Company?

Mr. Harriman: I think that is chairman of the executive committee.

Mr. Day: And the Southern Pacific?

Mr. Harriman: President.

Mr. Day: And member of the board of directors?

Mr. Harriman: Yes, sir.

Mr. Day: Have you any relations to the Chicago and Alton Railway Company?

Mr. Harriman: A director. I am a member of the executive committee. I think I am chairman of that, too.

Mr. Day: Are you officially related to the Chicago and Alton Railroad Company?

Mr. Harriman: I am a director I say.

Mr. Day: Of the old organization?

Mr. Harriman: I think so.

Mr. Day: Who appointed Mr. Stubbs, the traffic manager of your system?

Mr. Harriman: The various companies.

Mr. Day: What companies?

Mr. Harriman: The ones that he may be director of traffic of. It is all set out—Union Pacific and Southern Pacific.

Mr. Day: What part did you take in his appointment, in selecting him, in naming him as traffic director?

Mr. Harriman: One vote in the board of directors.

Mr. Day: You simply voted for him in the board of directors?

Mr. Harriman: Yes, sir.

Mr. Day: Was his appointment agreed upon before the vote was taken?

Mr. Harriman: I can not say it was agreed upon. There is a difference between agreeing and understanding.

239 Mr. Day: Well, understanding?

Mr. Harriman: Of course, in all such matters that come before the board of directors they are not asked to be decided at once. Usually they are talked over in board meetings and decided at a future meeting. I can not say now how the selection of Mr. Stubbs was brought about.

Mr. Day: Now, the understanding which preceded his final appointment, what was said to be the scope—what was said respecting the scope of the new office about to be created, called a traffic director?

Mr. Harriman: Well, that is very difficult to remember just what was said. I think the intention was, if that is what you want, that Mr. Stubbs was too far away from the center of traffic controlled or too valuable a man to keep out of the Pacific slope. He could not come into contact with the other bright minds arranging the traffic of the different railroads and the methods of conducting it.

Mr. Day: What were proposed to be the duties of the traffic director; what was said?

Mr. Harriman: A general supervision of the traffic in coöperation with the various presidents of the different systems.

Mr. Day: Was he given control—direction of traffic?

Mr. Harriman: No, sir.

Mr. Day: By the routes and lines of your system?

Mr. Harriman: No, sir.

Mr. Day: What was said in respect to that?

Mr. Harriman: That he should advise with the traffic officers of the various systems and presidents.

Mr. Day: You mean the various lines comprising the system?

Mr. Harriman: Yes, sir.

Mr. Day: Was anything said about an excess of traffic going by one route over another, or one line or route getting a less share of the traffic than some might think was its due?

Mr. Harriman: No, sir.

Mr. Day: Was that subject discussed at all?

Mr. Harriman: No, sir.

Mr. Day: About a division of the traffic, and apportioning it fairly and justly between the lines composing your system?

Mr. Harriman: No, sir.

Mr. Day: At no time among the members of the board of directors, so far as you know, was that discussed?

Mr. Harriman: I do not remember that that subject ever came up. I think the word "director" is perhaps misunderstood.

240 He is not director of the traffic to go by one line as against the other, but in the sense of being a director having charge of the traffic departments of the several lines, so that he could work

in coöperation with the officers of those lines, just as I am a director of these various lines, but I can not direct the affairs of those companies.

Mr. Day: You are one of a number that my direct them?

Mr. Harriman: Decide questions brought before them.

Mr. Day: Mr. Stubbs is not a director of any of the railroads?

Mr. Harriman: Not at present.

Mr. Day: Was the power to raise or make rates committed to Mr. Stubbs?

Mr. Harriman: In coöperation with the officers of the various lines.

Mr. Day: That was discussed?

Mr. Harriman: In the board of directors?

Mr. Day: Yes, sir.

Mr. Harriman: I think not.

Mr. Day: Well, whether sitting as a board or members of the board together discussing the subject, what are the limits of Mr. Stubbs' powers as traffic manager?

Mr. Harriman: Well, I think I have answered that. He can arrange the matters pertaining to the traffic departments by advising with and coöperating with the executive officers and traffic officers of the systems.

Mr. Day: Has he power to direct whether traffic shall go by the route of the old Southern Pacific, the most southerly route to the Pacific coast, rather than what was originally the Union Pacific and Central Pacific?

Mr. Harriman: I do not think Mr. Stubbs or any other man could direct that.

Mr. Day: Well, there are instances where the shipper does not direct that?

Mr. Harriman: I do not know of any instance. In any event, Mr. Stubbs has no more control of that now than he had before he was brought to Chicago.

Mr. Day: I remember an instance testified to in this city where many hundred carloads of traffic were consigned by the shipper over one of the trunk lines and that trunk line turned it over to a rival trunk line. The shipper had no voice.

Mr. Harriman: We are not a trunk line. I do not know about those matters. But I do not know of any instance in the Southern Pacific.

241 Mr. Day: I am asking you whether he has the power to do that?

Mr. Harriman: You are giving an illustration, and I do not think it is a fair one. The affairs of the Southern Pacific have always been conducted on certain lines and are still conducted that way.

Mr. Day: What I am endeavoring to do is to determine what those lines are on which it is now conducted. What are the powers of Mr. Stubbs? I can only know from what you say and Mr. Stubbs testifies. I have no other knowledge. I want to know the limits of

his powers, what he is expected to do and does do under the direction of your board or chairman of the executive committee.

Mr. Harriman: I tried to answer that.

Mr. Day: You have answered fully?

Mr. Harriman: I think I have. I do not know that there is anything more.

Mr. Day: Well, we will pass that. Now, the Union Pacific Railway Company; what are the relations between the Union Pacific and Southern Pacific Company?

Mr. Harriman: Connecting lines.

Mr. Day: Anything else?

Mr. Harriman: No, sir.

Mr. Day: Has the Union Pacific any stock interest in the Southern Pacific?

Mr. Harriman: Yes, sir.

Mr. Day: What is that?

Mr. Harriman: You mean the amount?

Mr. Day: Yes, sir; the extent of it.

Mr. Harriman: I think between 35 and 40 per cent.

Mr. Day: Of the entire capital stock?

Mr. Harriman: Yes, sir.

Mr. Day: How was that interest acquired?

Mr. Harriman: By purchase.

Mr. Day: Any other interest in the Southern Pacific except what results from that ownership?

Mr. Harriman: No, sir.

Mr. Day: No lease?

Mr. Harriman: No, sir.

Mr. Day: No guaranty of dividends?

Mr. Harriman: No, sir.

Mr. Day: Or bonds?

Mr. Harriman: Nothing whatever.

242 Mr. Day: Approximately in round numbers what does that at par value amount to?

Mr. Harriman: About $75,000,000.

Mr. Day: And the capital stock of the Southern Pacific is what?

Mr. Harriman: Two hundred millions; within a million or two of that.

Commissioner Clements: Is that held by the Union Pacific Company itself, or the people interested in it?

Mr. Harriman: That is held by the Union Pacific.

Commissioner Clements: The corporation?

Mr. Harriman: The corporation.

Mr. Day: Is it carried on the books of the Southern Pacific as the property of the Union Pacific?

Mr. Harriman: I do not remember whether it is or not.

Mr. Day: Who votes the stock?

Mr. Harriman: I think that stock stands in the name of one or two directors of the Union Pacific.

Mr. Day: As trustees?

Mr. Harriman: In their individual names, I think; I do not remember.

Mr. Day: In your annual report it is carried as the property of the Union Pacific Railroad Company.

Mr. Harriman: It so states in the report; yes, sir.

Mr. Day: Who are those gentlemen that vote that stock?

Mr. Harriman: I think I am one. I know I am one. I think the other is Mr. Pierce.

Mr. Day: Winslow?

Mr. Harriman: Winslow Pierce; I think so.

Mr. Day: You are president of the Oregon Short Line, are you not?

Mr. Harriman: Yes, sir.

Mr. Day: What interest has the Union Pacific in the Oregon Short Line?

Mr. Harriman: It owns its stock.

Mr. Day: Approximately all of it?

Mr. Harriman: Well, I think approximately all.

Mr. Day: Has the Union Pacific Company any interest in the Great Northern Railroad Company?

Mr. Harriman: No, sir.

Mr. Day: Proprietary; share owner, or otherwise?

Mr. Harriman: No, sir.

Mr. Day: Has it in the Northern Pacific railway?

243 Mr. Harriman: No, sir.

Mr. Day: Has the Oregon Short Line any interest in the Northern Pacific Railway Company?

Mr. Harriman: No, sir.

Mr. Day: Has the Union Pacific had any interest as a share owner in the Northern Pacific Railway Company?

Mr. Harriman: No, sir.

Mr. Day: Has the Oregon Short Line had?

Mr. Harriman: Yes, sir; that states in the report that we had about seventy-eight millions of Northern Pacific stock.

Mr. Day: When did the Oregon Short Line acquire that?

Mr. Harriman: Last spring. I do not remember exactly.

Mr. Day: Prior to last spring had the Oregon Short Line any interest as owner in the Northern Pacific Railroad Company?

Mr. Harriman: Prior to last spring, not to my knowledge. It may have some years back. I do not know.

Mr. Day: What is the total capital stock of the Oregon Short Line?

Mr. Harriman: I think between twenty-seven and twenty-eight millions.

Mr. Day: It purchased how much stock of the Northern Pacific?

Mr. Harriman: Seventy-eight millions.

Mr. Day: How did it pay for that stock?

Mr. Harriman: Some in cash and some by issuing its own obligations against that stock.

Mr. Day: How much cash did it pay approximately?

Mr. Harriman: Fifteen or twenty million dollars.

Mr. Day: That came out of its own treasury?

Mr. Harriman: Yes, sir.

Mr. Day: How was the money raised by the Oregon Short Line to acquire the balance of $60,000,000?

Mr. Harriman: By issuing its own certificates of indebtedness.

Mr. Day: Who did it issue the certificates to. What I want——

Mr. Harriman: What you want is to find out if the Union Pacific has any interest in that purchase?

Mr. Day: Yes, sir.

—. Harriman: I want to be frank about it. The Union Pacific helped the Oregon Short Line to finance it and purchased from the Oregon Short Line the certificates of indebtedness, the money for which it was used in paying for the Northern Pacific stock.

Mr. Day: The sixty-one millions of that purchase money came out of the Union Pacific treasury, practically?

244 Mr. Harriman: Yes, sir.

Mr. Day: Directly or indirectly?

Mr. Harriman: Yes, sir.

Mr. Day: Now, the Union Pacific owns $75,000,000 of the Southern Pacific stock—a controlling interest?

Mr. Harriman: Oh, no.

Mr. Day: Practically so?

Mr. Harriman: I do not know.

Mr. Day: The Union Pacific does control it?

Mr. Harriman: There are some of them members of the board of directors, but there are others also.

Mr. Day: Speaking to the substance of the thing, rather than the legal aspects, the Union Pacific now does control it?

Mr. Harriman: Anybody that had seventy-five millions out of two hundred millions would have a strong influence in making up the board.

Mr. Day: But, as a matter of fact, the Union Pacific does control the Southern Pacific system, does it not, to-day?

Mr. Harriman: For instance, the Union Pacific might tomorrow sell its seventy-five millions and then it would not.

Mr. Day: I am speaking of to-day—your actual possession, irrespective of the seventy-five millions. Does the Union Pacific interest to-day control the Southern Pacific railroad.

Mr. Harriman: You mean without any other voice; any other interest?

Mr. Day: Does it not operate it to the same extent it operates the Oregon Railway and Navigation Company?

Mr. Harriman: Not quite. Hardly. There are other interests represented in the Southern Pacific, and it is not always harmonious.

Mr. Day: But the actual control of the property?

Mr. Harriman: Usually the voice of the Union Pacific representatives controls; that is, they impress on the board of directors the

matters they have in hand for the benefit of the Southern Pacific or those that are best to be done. For instance, I will give an illustration of that. As you probably all know, the Union Pacific has during the last two or three years expended a very large amount in repairs, you might say, and improving its own property. It has done so to the extent of $25,000,000 or $30,000,000 and has put itself in a position where it can operate to the best advantage and give the best service in the territory served by it. In taking the Southern Pacific in hand, the Union Pacific interests considered that
245 that same method should be adopted as to the Southern Pacific. Some of the representatives of the other stockholders thought not, but the voice of the Union Pacific representatives prevailed. There are some twenty millions to be expended this year in improving the Southern Pacific on the same basis as the Union Pacific.

Commissioner Prouty: What part of it?

Mr. Harriman: It will be distributed over the lines from New Orleans to Los Angeles, and from Los Angeles to San Francisco, and from San Francisco to Ogden.

Commissioner Prouty: Not especially between San Francisco and Ogden?

Mr. Harriman: No, sir. A large amount is to be expended there; I think one-third of it. It has been carefully gone over, and I think distributed over the whole line; and there is also motive power to be distributed over the line; there are, I think, 180 engines—large locomotives—to be provided.

Commissioner Fifer: What is the character of the improvements?

Mr. Harriman: Reduction of grades, elimination of curvature, and elimination of the old light equipment.

Commissioner Prouty: How do you raise the money for that?

Mr. Harriman: We have not raised it all. Perhaps we would like a little advice on that subject. It is quite a large amount.

Commissioner Prouty: You do not seem to have had much difficulty in raising seventy-five or eighty millions when you wanted it?

Mr. Harriman: There is nothing like having good credit.

Mr. Day: Speaking of the facility for raising money, the sixteen millions that the Oregon Short Line did not get from the Union Pacific, did it get that out of its treasury or borrow it?

Mr. Harriman: It had a surplus in its treasury. I think it had several million surplus and it borrowed the rest.

Mr. Day: Not on the certificates.

Commissioner Prouty: Have you increased the mortgage obligations of the Union Pacific?

Mr. Harriman: In what time?

Commissioner Prouty: In making your improvements?

Mr. Harriman: Very little. We have not issued any direct obligations of the Union Pacific to make these improvements. When

I speak of the Union Pacific I refer to the Union Pacific system that includes the Oregon Short Line as well. But most of the improvements have been made through the Rocky Mountain districts; in fact, the improvement there was really—the elimination of
246 curvature was possibly 200 per cent. and the elimination of grades was substantially 100 per cent.

Commissioner Prouty: Is that substantially done?

Mr. Harriman: Substantially done; yes, sir.

Mr. Day: You have increased the bonded indebtedness of the Union Pacific the last year, or has it not been increased?

Mr. Harriman: I do not understand that question.

Commissioner Prouty: I asked as to the mortgage indebtedness, I think.

Mr. Harriman: No, sir; we have not increased it.

Mr. Day: How much of an increase in your bonded indebtedness has been effected in the past year, or to take the last year, the year preceding?

Mr. Harriman: Have you the Union Pacific report there?

Mr. Day: Yes, sir.

Mr. Harriman: You have not the one for the year previous, have you?

Mr. Day: No.

Mr. Harriman: I can only speak from memory.

Mr. Day: I will ask you this, then. How was the purchase of Southern Pacific stock financed? How was the cash acquired for the purchase of the Southern Pacific?

Mr. Harriman: I think we borrowed the money in the first instance.

Mr. Day: Then did you not issue some bonds to pay for that?

Mr. Harriman: You refer to convertible bonds?

Mr. Day: Yes, sir.

Mr. Harriman: I am not trying to hide the fact that I issued one hundred millions of convertible bonds. That is one of the things we can not hide. There are one hundred millions of convertible bonds used in the purchase of these various securities that you see in the annual report of the Southern Pacific. I can not detail them now.

Mr. Day: You raised one hundred millions on those bonds?

Mr. Harriman: About one hundred million I think it was.

Mr. Day: Was any of that money used for improvements?

Mr. Harriman: No, sir.

Mr. Day: That was all used for the acquisition of new lines?

Mr. Harriman: New lines; yes, sir.

Mr. Day: And among others, the stock of the Southern Pacific?

Mr. Harriman: Some of it. I do not know whether it was altogether that. There may have been some other properties we acquired.

247 Commissioner Prouty: Have those bonds been actually sold?

Mr. Harriman: Yes sir.
Commissioner Prouty: What interest do they bear?
Mr. Harriman: Four per cent.
Commissioner Prouty: Did they sell for par?
Mr. Harriman: At par; yes, sir?
Mr. Day: Let me see if I understand you. The Union Pacific Railway Company owns seventy-five millions of the stock of the Southern Pacific Railroad Company or the Southern Pacific Company. The Union Pacific Company owns all, or nearly all, of the stock of the Oregon Short Line. The Oregon Short Line owns all, or nearly all, of the stock of the Oregon Railroad and Navigation Company.
Mr. Harriman: The Union Pacific?
Mr. Day: No; the Oregon Short Line.
Mr. Harriman: The Short Line has a considerable interest in the Navigation Company. I think our report shows that the Union Pacific owns considerable interest in that company.
Mr. Day: What the Union Pacific does not hold in the Oregon Railroad and Navigation Company the Short Line does?
Mr. Harriman: Not all.
Mr. Day: Practically?
Mr. Harriman: Practically.
Mr. Day: And the Oregon Short Line purchased seventy-eight millions of the common and preferred stock of the Northern Pacific Railroad Company last spring?
Mr. Harriman: That is about right.
Mr. Day: How is that stock held?
Mr. Harriman: In the Oregon Short Line railroad.
Mr. Day: In the name of that company?
Mr. Harriman: It is held for that company.
Mr. Day: In whose name?
Mr. Harriman: Harriman and Pierce.
Mr. Day: As trustees?
Mr. Harriman: No; I think in their names.
Mr. Day: But there is a memorandum, I suppose, of the trust under which you hold it?
Mr. Harriman: I think there must be. There would be naturally.
Mr. Day: Where is that memorandum?
Mr. Harriman: I suppose it is in the office of the Oregon Short Line.
Mr. Day: You are president of that company?
248 Mr. Harriman: Yes, sir.
Mr. Day: Is that stock still held in your name and that of your co-trustee, Mr. Pierce?
Mr. Harriman: Now, let us jump again. What you are trying to get at is whether we sold that stock. I had a talk with Commissioner Knapp and he said he would try to let me go on the train to-day, so I want to save time.

Mr. Day: Well, proceed and tell the whole history of that transaction.

Mr. Harriman: The Northern Pacific stock has been sold.

Mr. Day: All of it?

Mr. Harriman: All of it.

Mr. Day: I thought you wanted to go ahead and tell the whole story.

Mr. Harriman: Well, that is all you asked. There is no more story to tell.

Mr. Day: To whom was it sold?

Mr. Harriman: To individuals.

Mr. Day: Who are the individuals?

Mr. Harriman: I do not remember.

Mr. Day: When was the sale effected?

Mr. Harriman: Some time during the summer, I think, the last of August or September. It has been sold since July, September, or October, or August.

Mr. Day: How long before the meeting of the board of directors of the Northern Pacific Company was it sold?

Mr. Harriman: Oh, some time—I do not remember—thirty or sixty days, perhaps.

Mr. Day: Who negotiated for the sale of that stock?

Mr. Harriman: I did, principally.

Mr. Day: Were you authorized to make the sale by a vote of the board of directors of the Short Line?

Mr. Harriman: No, sir.

Mr. Day: Your action was without consultation with your co-directors?

Mr. Harriman: We had many talks.

Mr. Day: What were the terms of sale—what was the agreement respecting the sale?

Mr. Harriman: I do not mean for you to understand that there was no action by the board of directors of the Oregon Short Line but the final transaction; the Oregon Short Line authorized the sale to be made on the terms that were reported to it. In this instance it took no action as to authorizing negotiations.

249 Mr. Day: What were the terms reported to it?

Mr. Harriman: The sale of the stock.

Mr. Day: What were the terms of it?

Mr. Harriman: You mean what price we got?

Mr. Day: No; I do not care about the price, but the terms—the conditions of the sale?

Mr. Harriman: No conditions.

Mr. Day: A price was named?

Mr. Harriman: Yes, sir.

Mr. Day: You did not know who the purchasers were?

Mr. Harriman: I know to whom the stock was delivered. There were other people. I do not think it was all purchased by one house or one person.

Mr. Day: Do you know who it was purchased for?

Mr. Harriman: No, sir.

Mr. Day: Who participated in the conferences with you respecting the sale of that stock?

Mr. Harriman: Mr. Pierce, a partner of the firm of J. P. Morgan & Co., and, I think, Mr. Hill, and, possibly, Mr. Schiff.

Mr. Day: Where did those conferences take place?

Mr. Harriman: Some in the office of Morgan & Co., and some in my office.

Mr. Day: There had been a great contest between interests with which you were personally allied and interests with which Mr. Morgan, we may say, or Mr. Hill were allied, respecting the control of the Northern Pacific railroad last year?

Mr. Harriman: I am very glad of a chance to explain that. I do not think there had been any contest. The facts are that some of us allied with the Oregon Short Line or Union Pacific thought it would be advantageous to the Oregon Short Line to have an interest in the Northern Pacific, and we went about acquiring that interest and purchased the stock that was lying loose all over this country and in Europe. I suppose it was held by 6,000 or 7,000 people, and to our mind it ought not to make any difference to any other interest whether we owned the stock or whether it was held by several thousand other people. We made no contest for the purchase of the stock and no contest for the control of the road, and I may say here that prior to the supposed contest in the market that stock was acquired, and no stock was acquired during those days of panic in it, nor were any orders given by us.

Commissioner Prouty: You had already bought, and the question was whether the other fellow could deliver.

250 Mr. Harriman: Who do you mean by the other fellow?

Commission- Prouty: I do not mean Mr. Hill and his crowd, but the man from whom you bought the Northern Pacific stock. Had not you and others bought Northern Pacific stock from people that did not own or deliver it?

Mr. Harriman: I think this: Of course you know there are markets for American railway securities not only in this country, but in Germany, Holland, and England, and some of the stock that we had purchased had not been delivered, but was on its way from those various markets. It had been purchased in those markets and agreed to be delivered in New York, and of course in the meantime they were using stock of other people to make their deliveries. It was not all coming by any means to interests; it had been delivered very largely with interests associated with me.

The Chairman: Does that mean that it was not bought from persons that did not own it?

Mr. Harriman: No, sir; it was purchased in New York of agents who repurchased in these other markets. They tried to deliver in New York by borrowing from persons that owned it here. Then, when the contest took place and other parties went into the market

and purchased Northern Pacific at very high prices and demanded delivery of the stock, naturally those persons that purchased in other markets to deliver here found it difficult to get that stock to fill contracts in New York, and our interests in every instance gave them all the time they wanted to have the stock brought from the various markets from which they had purchased to deliver to us.

Commissioner Fifer: Were those the influences that sent Northern Pacific stock up to nearly a thousand dollars a share last year?

Mr. Harriman: Which ones?

Commissioner Fifer: Northern Pacific went up very high last May in New York, did it not?

Mr. Harriman: Yes, sir.

Commissioner Fifer: What were the influences?

Mr. Harriman: That is the contest, I think, that you gentlemen refer to. We were not in that contest and had no hand in it.

Mr. Day: That was not the contest my question referred to.

Commissioner Prouty: You say you did not suppose it made any difference to anybody whether you owned this stock or whether 7,000 persons owned it. If you had secured a few more millions of common stock of the Northern Pacific it would have made a difference to somebody, would it not?

251 Mr. Harriman: We could have secured it.

Commissioner Prouty: Do you mean you did not want it?

Mr. Harriman: We did not want it at anything like the price eventually paid for it.

Commissioner Prouty: You have sold that stock, the whole of it. Was that enterprise a profitable one or the reverse? I take it that finally the public has to pay for it if you lost money there; have to pay it in freight rates or in some way. Now, as bearing on the question whether railroad companies ought to have a right to speculate in stocks, I would like to know whether that enterprise was profitable.

Mr. Harriman: That was not gone into by the railroad company as a speculation in any way. We thought that a dominating influence, or a large influence, in the ownership of the Northern Pacific would secure to the Union Pacific system what was already a valuable connection, and keep open avenues of traffic which we thought our interests and the interests of the public and our duty to the public demanded.

Commissioner Prouty: And in that attempt you failed?

Mr. Harriman: Oh, no, we have not failed. We feared that there might be some change in the relations of the Northern Pacific and the territory served by it and the territory served by the Union Pacific, and perhaps the territories which the Union Pacific contemplated extending into.

Commissioner Prouty: Well, I understand that you started out to obtain a controlling interest in the Northern Pacific—a dominating interest in the Northern Pacific?

Mr. Harriman: Which we did do.

Commissioner Prouty: You have disposed of that interest?

Mr. Harriman: Yes, sir.

Commissioner Prouty: Why did you dispose of it—because it was not sufficiently dominating?

Mr. Harriman: No, sir; we disposed of it because we were satisfied that the natural conditions and the strength of the Union Pacific system in itself would protect it from any of the restrictions that might be put on the traffic originating on the lines of the Northern Pacific and prevent it from going over the natural avenues open to it.

Commissioner Prouty: In other words, when you looked over the whole situation you thought better of it?

Mr. Harriman: I hardly think that is fair to put it that way.

Commissioner Prouty: I would like to know why you changed your mind between the time you bought Northern Pacific
252 stock and the time you sold. Did Mr. Hill convince you that he was going to do the fair thing?

Mr. Harriman: I do not think we rely on anybody's assurance that there is going to be any fair thing done. Mr. Hill might not be in control of the properties he is in control of now. Who knows? He says he has only thirty or forty millions of it.

Commissioner Prouty: He very likely knows where he can find a few millions more.

Mr. Harriman: That may be. That is all right; and let me say Mr. Hill is all right also.

Commissioner Prouty: You did not answer my question, and I do not know that I am disposed to insist on it if you do not want to.

Mr. Harriman: I want to answer every question I can.

Commissioner Prouty: It seems to me the Union Pacific went into an attempt to buy the Northern Pacific and afterwards receded from that attempt, and it seems to me if the Union Pacific lost money——

Mr. Harriman: They had accomplished it.

Commissioner Prouty: There were certain difficulties in the way of bringing that to a permanent fruition?

Mr. Harriman: No; I think not.

Commissioner Prouty: Well, I know very little about the financial operations.

Mr. Harriman: But you want to know.

Commissioner Prouty: Yes, sir. I understand that in an imperfect way this was the situation: You had gone in to buy Northern Pacific stock. You had absolutely purchased a majority of that stock, but the stock of the Northern Pacific was made up of two kinds, common stock and preferred stock. You had more preferred stock, but less common stock, than Mr. Hill and his company. The preferred stock of the Northern Pacific could, under certain circumstances, be retired. I have been informed that Mr. Hill and his coadjutors threatened to retire that preferred stock, and therefore

retire you out of control of the Northern Pacific, and it was in consequence of that the arrangement was finally made.

Mr. Harriman: I think if we go into an argument on that subject I will not catch my train.

Commissioner Prouty: You said you wanted to tell.

Mr. Harriman: That is a question, I understand, that has never been brought to issue; but I think Mr. Hill—I listened to his interesting and very clear statements yesterday—stated to you
253 something about the agreement after meetings in my office and Mr. Morgan's office, to the effect that Mr. Morgan was to select the next board of directors of the Northern Pacific. In other words, there was a panic prevailing in the financial markets all over the world for some reason that they did not understand, and apparently for no reason at all, and when the matter was brought to our attention we disclaimed any intention of eliminating the former management of the Northern Pacific therefrom, and as evidence of that intention we agreed that Mr. Morgan should vote our stock at the next meeting.

Commissioner Prouty: Before you came to that conclusion had this question of the right of the Northern Pacific common stock to retire the Northern Pacific preferred stock been raised?

Mr. Harriman: Not to our minds.

Commissioner Prouty: Had it to your knowledge?

Mr. Harriman: Only in a general way, as it has with you.

Commissioner Prouty: Had your attorneys expressed an opinion on that subject?

Mr. Harriman: I do not remember that he had. I think there were various talks on that subject. But we were satisfied that the interest we had acquired in the Northern Pacific would accomplish all we desired in having secured to us and to the territory of the Northern Pacific and to our territory a free movement of the traffic on the lines it would naturally go.

Commissioner Prouty: And having secured that stock for that purpose and having got enough of it, you proceeded to perpetuate that influence by selling every share of stock you had.

Mr. Harriman: No, sir; there were various conferences, and we had offers for our interests in the Northern Pacific which we thought it was to the interest of our shareholders to dispose of. What you want to know is whether there was any understanding or agreement whereby we were to be secured in any general way by an alliance with the Northern Pacific?

Commissioner Prouty: That is one thing.

Mr. Harriman: Well, there was not any.

Commissioner Prouty: Then, I would like to ask you what you gained by your purchase and sale of the Northern Pacific stock? What did the Union Pacific gain?

Mr. Harriman: Well, I do not know. As to that, we developed the fact in our talks and conferences with these various people and

with our own officers—the fact that we were strong enough to maintain our position against any other organization.

Commissioner Prouty: Where did you develop that—in the stock market?

254 Mr. Harriman: No, sir; in our talks and conferences with our own people and the people affiliated with the Northern Pacific.

Commissioner Prouty: In other words, you came to a better understanding of the traffic situation?

Mr. Harriman: There was no understanding.

Commissioner Prouty: You came to a better knowledge?

Mr. Harriman: Yes, sir, we all had by conferences.

Commissioner Prouty: To come back to my original question, When you sold that stock—you need not answer the question if you do not want to—when you sold that stock did you make or lose money as a Union Pacific Company?

Mr. Harriman: As an Oregon Short Line Company.

Commissioner Prouty: It is all one as a Union Pacific proposition.

Mr. Harriman: I can answer that we did not lose any. We believe we did not lose any.

Commissioner Fifer: Did the Hill-Morgan influence control the board of directors of the Northern Pacific at the time of these negotiations?

Mr. Harriman: I do not know that Mr. Hill ever had any influence in the Northern Pacific. There had been a voting trust, as I understand, on the Northern Pacific, and I think that was controlled by the Morgan interests.

Commissioner Fifer: Did you believe at that time that the Morgan interests did control the directors of the Northern Pacific?

Mr. Harriman: It had all along.

Commissioner Fifer: Did that give them the right, or did you believe it would give them the right, to retire this preferred stock of the Northern Pacific and retire you from the control of the Northern Pacific?

Mr. Harriman: Will you repeat that?

Commissioner Fifer: Did you understand at the time of the negotiations, and was that an inducement to you to sell the interest of the Oregon Short Line, or the Union Pacific, the interest it held in the Northern Pacific——

Mr. Harriman: You mean did the fact that they might retire the preferred Northern Pacific stock influence us in disposing of it?

Commissioner Fifer: Yes, sir.

Mr. Harriman: No, sir.

Commissioner Fifer: They controlled the board of directors, however, or at least claimed to?

255 Mr. Harriman: Well, they had not had an election, you know. They controlled—I suppose they did—I presume they controlled the board of directors that was then in office.

Commissioner Fifer: Was anything said in those negotiations that if they did attempt to retire this preferred stock, you would appeal to the courts and enjoin them?

Mr. Harriman: In our conferences with them?

Commissioner Fifer: Yes, sir.

Mr. Harriman: No, sir. I do not think that question between the purchasers and ourselves came up. I do not remember that it did. Of course, you understand, I do not mean to say that that never came up between ourselves.

Commissioner Prouty: When this stock was sold, were the obligations which the Union Pacific and the Oregon Short Line had assumed to purchase it paid off?

Mr. Harriman: Some portion of it.

Commissioner Prouty: Some portion of it still remains?

Mr. Harriman: Well, the obligations—there are some that can not be paid off until maturity.

Commissioner Prouty: What was the form of certificate which the Oregon Short Line issued to raise money with which to purchase this Northern Pacific stock? What were the terms of it? It was the obligation of the Oregon Short Line, I suppose.

Mr. Harriman: An agreement to pay.

Commissioner Prouty: When was the certificate due?

Mr. Harriman: I do not remember. I think in ten or fifteen years, the larger part. Some part there was money borrowed for a short time on collateral, and since has been mostly paid off.

Commissioner Prouty: But the certificates themselves have not yet been paid and cannot be?

Mr. Harriman: I do not think they can be paid unless by agreement with the holders thereof.

Commissioner Clements: With what house or person were your negotiations made for the sale of this Northern Pacific stock?

Mr. Harriman: Mostly with J. P. Morgan & Co.

Commissioner Clements: And it was delivered to that house?

Mr. Harriman: I think it was. I do not have the supervision of that.

Mr. Day: Who negotiated the sale of your stock, this stock directly owned by the Short Line?

Mr. Harriman: The Northern Pacific, you have reference to?

Mr. Day: Yes, sir.

256 Mr. Harriman: I did.

Mr. Day: With whom did you make the negotiations?

Mr. Harriman: I think I said that.

Mr. Day: You said with some persons connected——

Mr. Harriman: The negotiations were conducted with members of the firm of Morgan & Co.

Mr. Day: What particular members did you carry on your negotiations with in which the terms were discussed?

Mr. Harriman: Well, there are four or five there—nearly all the members of the firm—Mr. Steele, Mr. Perkins, Mr. Bacon, and, I

think, at one time Mr. Morgan himself, and there may have been one other member of the firm. At various times they took it up, one by one and together.

Mr. Day: Who was the attorney who acted at that time for the Union Pacific and Short Line in respect to this stock, the holdings of Northern Pacific?

Mr. Harriman: I do not quite understand that question.

Mr. Day: You had some negotiations regarding the contest that was on?

Mr. Harriman: We never went into any contest.

Mr. Day: I used the word "contest" with respect to your effort to acquire what you say you started out to do, to get control——

Mr. Harriman: I think I tried to explain that we purchased the shares of the Northern Pacific prior to May 8 or 9, when there was a sudden rise. I do not consider that a contest. It never came to any contest for control of the Northern Pacific. There never was any contest.

Mr. Day: Were not you seeking to control the Northern Pacific railroad?

Mr. Harriman: To the elimination of the people already in there?

Mr. Day: No; to get—you sought to get a controlling interest in the Northern Pacific railroad, did you not? Did you not say you accomplished that?

Mr. Harriman: We purchased a majority of the capital stock of the Northern Pacific railroad; seventy-eight millions, I think it was, out of one hundred and fifty-five.

Mr. Day: And you stated that the Union Pacific accomplished its object in that respect. What was its object?

Mr. Harriman: To preserve to the Union Pacific system the avenues that were already open to it for exchange of traffic with the Northern Pacific system.

Mr. Day: You told Commissioner Prouty, in reply to a question propounded by Commissioner Prouty respecting your reasons
257 for the sale of this seventy-eight millions of stock so shortly after you purchased it, that the Union Pacific had accomplished its object in the purchase. What was that object or how did you accomplish that object? What assurances have you that you have accomplished it, if that was the only object? What assurances were given you by anyone respecting the future conduct of the Northern Pacific or those avenues of communication between it and the Oregon Short Line or the Union Pacific?

Mr. Harriman: I do not presume that it would be possible for any individual or any combination to give any promise that would be a security to anybody else in the affairs of the operation of any railroad, the Northern Pacific or any other. For instance, these people who purchased the Northern Pacific might sell the stock to-morrow or before the next election and still whatever assurances there were would be of no avail.

Mr. Day: Were there any assurances?
Mr. Harriman: No, sir.
Mr. Day: None at all?
Mr. Harriman: No, sir.
Mr. Day: Directly or indirectly, controlling the operation of the Northern Pacific?
Mr. Harriman: That covers a great deal of ground. We had many conferences as to what the movement by various lines would be, and, considering the whole question, the Union Pacific management determined that it was no longer necessary, as it was believed that it would — to the interest of the Northern Pacific to use the avenues open over the Northern Pacific as it had before, notwithstanding it had purchased the Burlington.
Mr. Day: Were any assurances given you regarding the future relations of the Burlington road with the Union Pacific?
Mr. Harriman: No, sir.
Mr. Day: Nothing said in respect to that, as to how it should be conducted and used?
Mr. Harriman: The Burlington touches the Union Pacific lines at a great many points?
Mr. Harriman: I should think it did.
Mr. Day: You asked no assurances regarding that and received none?
Mr. Harriman: No, sir.
Mr. Day: Was any inducement held out to you to enter the Northern Securities Company or take any interest in that?
Mr. Harriman: No, sir.
Mr. Day: By any of these gentlemen?
258 Mr. Harriman: No, sir.
Mr. Day: You are a shareholder in that?
Mr. Harriman: I am individually; yes, sir; but it has been purchased since—within the last month, I expect; a small interest—not in relation to this.
Mr. Day: Are you a member of the board of directors?
Mr. Harriman: Yes, sir.
Mr. Day: Have you ever sat with the board?
Mr. Harriman: I think I have.
Mr. Day: When?
Mr. Harriman: Once or twice. I think about a month ago.
Mr. Day: That company has only been organized about two months, has it not?
Mr. Harriman: I do not remember. I have not had anything to do with the organization of the Northern Securities Company.
Mr. Day: You are also a member of the executive committee of the Northern Securities Company, are you not?
Mr. Harriman: I think I am.
Mr. Day: Has that committee had a meeting?
Mr. Harriman: I think it has.
Mr. Day: Did you attend it?

Mr. Harriman: Well, I do not remember. I believe I attended one meeting of the executive committee of the Northern Securities Company—I think I did—either the board of directors or the executive committee.

Mr. Day: You wish to be understood as stating that no one representing the other half, or the minority holding of the preferred stock of the Northern Pacific, made any pledges or promises to you or to your colle-gues in Union Pacific respecting the future operation of the Great Northern, Northern Pacific, or the Burlington in the dealings of all or either with the Union Pacific system?

Mr. Harriman: I think that is a question in another form—I thought I answered that.

Mr. Day: I thought I would make it broad.

Mr. Harriman: There is a common interest among us all and we believe that common interest would be served, irrespective of any holding that we or anybody else might have. The common interest of the producer and the carrier, or the various carriers, would be finally adjusted on its own natural basis, irrespective of what anybody could promise or any agreement that might be made, and it would be impossible, in view of the power of the large systems that
259 now exist, for anyone to injure the other without injuring himself. Our interests are so common that we cannot help but consider each other.

Mr. Day: At any of these meetings or conferences were the terms of an adjustment of the questions outstanding between the majority and minority holders of the stock of the Northern Pacific Railroad Company reduced to writing?

Mr. Harriman: There was nothing, except the one just after the financial panic, in which it was suggested that we settle that once for all so as to reëstablish confidence, and that was the one. I think there is a memorandum. I am not sure. I think there is a memorandum in which we agreed that we would permit Mr. Morgan to vote our stock.

Mr. Day: Was anything else stated?

Mr. Harriman: It was merely a wish on our part to indicate to everybody that we had confidence in the then existing management of the Northern Pacific.

Mr. Day: Did you have any conference with the same gentlemen subsequent to that respecting the holding of the Northern Pacific railroad?

Mr. Harriman: That conference—of course we had conferences and negotiations, because there was a desire to purchase our interests. Of course, we could not sell it without negotiations being conducted by somebody.

Mr. Day: Did you attach to your negotiations for the sale of Northern Pacific stock any other conditions than the one of the money price?

Mr. Harriman: No, sir.

Mr. Day: No other conditions?

Mr. Harriman: No other conditions that I remember.

Mr. Day: No other consideration except the one of the money price?

Mr. Harriman: I do not remember any condition of the Union Pacific or Oregon Short Line in any way.

Mr. Day: Or the gentlemen who held the stock, yourself or your cotrustee, or your attorneys—Mr. Schiff or any member of the firm of Kuhn, Loeb & Co.?

Mr. Harriman: None other than I have stated.

Mr. Day: Of the various interests?

Mr. Harriman: No, sir.

Mr. Day: Who has that memorandum?

Mr. Harriman: I do not know. Of course, when the election took place the whole thing fell, and that memorandum may be in existence and may not, I am not sure. I think that mem-
260 orandum was conveyed in a published statement—published in a New York paper—to the effect that we had agreed that Mr. Morgan should vote our stock.

Mr. Day: When you sold your seventy-eight millions of stock did you receive cash for it?

Mr. Harriman: Cash and securities.

Mr. Day: What part cash?

Mr. Harriman: I do not remember; quite a large amount cash.

Mr. Day: What proportion securities?

Mr. Harriman: The same thing. Of course it covered a very large amount of money. We secured some securities and some cash.

Mr. Day: What was the character of the securities you received?

Mr. Harriman: Some of the securities of the Northern Securities stock.

Mr. Day: And the cash was for your preferred stock?

Mr. Harriman: We made no difference. We sold what we had.

Mr. Day: Had the Northern Securities Company then been organized or was it an agreement that you would take its stock when it was organized?

Mr. Harriman: I do not remember that.

Mr. Day: When was the sale made?

Mr. Harriman: In September or October.

Mr. Day: The Northern Securities Company was not incorporated until November 12. You could not have had its securities then.

Mr. Harriman: Well, we had then the agreement to deliver us the securities of a company.

Mr. Day: Is that agreement in writing?

Mr. Harriman: Or cash. I think that is the way it was.

Mr. Day: Is that agreement in writing?

Mr. Harriman: I think we made a memorandum.

Mr. Day: Whom do you mean by "we"?

Mr. Harriman: J. P. Morgan & Co., or in the office of J. P. Morgan & Co., and myself.

Mr. Day: You have a copy of the memorandum?

Mr. Harriman: The transaction was completed.

Mr. Day: When did you get the securities for the balance?

Mr. Harriman: I think we got them in December before the year was out; I do not know. We may have secured some other securities. I do not know.

261 Mr. Day: Were you aware at the time you made the agreement, which you say was in writing, to dispose your seventy-eight millions of Northern Pacific stock——

Mr. Harriman: Whether there was to be a securities company formed?

Mr. Day: Yes, sir.

Mr. Harriman: I think there was some talk of that.

Mr. Day: Did you then know at that time that it was proposed that the Northern Pacific Company should issue this new bond it did, this new bond and mortgage to raise the money, this convertible bond to retire the preferred stock?

Mr. Harriman: I know nothing about what they were to do or how they were to do it.

Mr. Day: There was nothing said to you about the seventy-five millions of convertible bonds?

Mr. Harriman: I cannot remember that there was. It had nothing to do with our transaction. We made no difference between common and preferred stock.

Mr. Day: I want the extent of your information at that time respecting the future policy, the plan by which the preferred stock was to be retired and bonds to the amount of seventy-five millions, convertible bonds, convertible into common stock, was to be issued in payment of the preferred stock to be retired—were you aware of that?

Mr. Harriman: I think not.

Mr. Day: You were given no option to take that for your stock?

Mr. Harriman: We had nothing to do with the securities issued.

Mr. Day: Will you file with the commission a copy of that memorandum?

Mr. Harriman: I will try to if I can get it. I will be very glad to furnish them with any information.

Mr. Day: Was it before or after you had taken the stock in the Northern Securities Company—I mean that you had affected the sale, completed the sale of the seventy-eight millions to Pierpont Morgan & Co. of the Union Pacific interest in the Northern Pacific road—that you were elected a member of the board of directors of the Northern Securities Company? Was it prior or subsequent to the sale of the seventy-eight millions of stock that you were elected a member of the board of directors of the Northern Securities Company?

Mr. Harriman: As you say, we sold our seventy-eight millions of stock.

262 Mr. Day: I mean when you completed the transaction when you actually delivered the stock and took Northern Securities stock in part payment.

Mr. Harriman: I do not think we got Northern Securities Company stock in part payment in the first instance. Our sale was made and completed, I think, before the Northern Securities Company was formed. I think there was only an agreement as to that.

Mr. Day: When were you elected a member of the board of directors of the Northern Securities Company?

Mr. Harriman: I do not remember. I guess in November or December. I know I did not attend the first meetings of that company.

Mr. Day: Who holds that stock in the Northern Securities Company?

Mr. Harriman: I presume the Oregon Short Line.

Mr. Day: What was the amount of that?

Mr. Harriman: I do not remember.

Mr. Day: Roughly speaking.

Mr. Harriman: Oh, it was fifty or sixty millions.

Mr. Day: You think it is in the name of the Oregon Short Line?

Mr. Harriman: No; I think not.

Mr. Day: Was it prior to the issue of that fifty or sixty million of stock, in which an equity belongs to the Oregon Short Line, that you were elected a member of the board of directors?

Mr. Harriman: That I do not remember. These things had no bearing on each other.

Mr. Day: They had not?

Mr. Harriman: No, sir.

Mr. Day: They were entirely independent transactions. Your election as a member of the board of directors of the Northern Securities Company had no bearing whatever, no relation to the ownership of the $78,000,000 of the Northern Pacific road?

Mr. Harriman: My election to the Northern Pacific board?

Mr. Day: To the Northern Securities board?

Mr. Harriman: No, sir.

Mr. Day: I forgot what your answer was to my inquiry as to what your official relation was to the Chicago and Alton Railway Company?

Mr. Harriman: I am a director; a member of the executive committee, and, I think, chairman.

Mr. Day: Are you also a member of the old company, the Chicago and Alton Railroad Company?

263 Mr. Harriman: I think I am.

Mr. Day: What is the capital stock of the Chicago and Alton Railroad Company?

Mr. Harriman: I can not remember those figures.

Mr. Day: Well, about?

Mr. Harriman: I do not remember, really. I think, whatever it was, I think we had to pay about $40,000,000.

Mr. Day: What is the capital stock of the Chicago and Alton Railway Company?

Mr. Harriman: I think that is $40,000,000. I may be mistaken about that. It is common and preferred stock—that can be obtained.

Mr. Day: Both companies are subsisting corporations—the railroad company and railway company?

Mr. Harriman: Yes, sir.

Mr. Day: By what sort of title does the Chicago and Alton Railway Company hold the property of the Chicago and Alton Railroad Company, formerly owned and controlled by the Chicago and Alton railroad; lease or how?

Mr. Harriman: I think it is by lease and ownership both. That is my recollection.

Mr. Day: The lease was for a term of years?

Mr. Harriman: I think it was.

Mr. Day: Is there any contract—any contractual relation—between the old company and the new company except as set out in the lease?

Mr. Harriman: I believe not.

Mr. Day: How much of the stock of the Chicago and Alton Railroad Company (meaning the old company) is owned by the new company?

Mr. Harriman: All but a few millions; I think there is a million or two millions—practically all.

Mr. Day: All but a few millions is an asset of the new company?

Mr. Harriman: Yes, sir.

Mr. Day: Of the stock of the old company all but a few millions is an asset of the new company?

Mr. Harriman: Yes, sir.

Mr. Day: Do you know whether the railway company guarantees any dividends on the stock of the new company?

Mr. Harriman: I do not remember.

Mr. Day: If it does, is that set out in the lease?

Mr. Harriman: I think it is all set out.

264 Mr. Day: Will you furnish a copy of that?

Mr. Harriman: Yes, sir; I will furnish a copy. I think the lease provides for the net earnings of the company. I am not sure.

Mr. Day: If the capital stock of the new company is forty millions as you suppose or approximate——

Mr. Harriman: It is what the property cost. I do not know what it is. Whatever the stock cost, I think that is the capital of the railway company.

Mr. Day: The capital stock of the new company was all paid up in cash?

Mr. Harriman: Yes, sir.

Mr. Day: Par?

Mr. Harriman: Yes, sir; cash or its equivalent. It was issued

for cash or for Chicago and Alton Railroad stock or some other property.

Mr. Day: How was the money raised—by collateral mortgage or trust, or how did the new company raise the money—by bonds?

Mr. Harriman: Some bonds and some stock.

Mr. Day: The stock was paid for in cash?

Mr. Harriman: Or its equivalent—exchanged for securities purchased.

Mr. Day: What is the amount of bonds the new company issued?

Mr. Harriman: That I do not know. I could not say. I think $15,000,000.

Mr. Day: What was the stated price of the stock of the old company that the new company paid?

Mr. Harriman: I do not remember now, but some time ago I think it was about 200.

Mr. Day: The par value of the old stock was 100, and it paid 200?

Mr. Harriman: Two hundred per cent.

Mr. Day: Is the Union Pacific system or any of its subsidiary lines or companies interested as a share owner?

Mr. Harriman: In the Chicago and Alton?

Mr. Day: In the Chicago and Alton—any relationship between the two companies?

Mr. Harriman: No, sir.

Mr. Day: They are quite independent?

Mr. Harriman: Absolutely independent.

Mr. Day: No pecuniary interest in the Alton?

265 Mr. Harriman: No affiliation whatever.

Mr. Day: In either way?

Mr. Harriman: In either way.

Mr. Day: Pending the negotiations for the sale of the seventy-eight millions of Northern Pacific stock, which has been referred to, and the questions which arose respecting it from time to time among your associates, who acted as your legal counsel?

Mr. Harriman: Mr. Pierce.

Mr. Day: On what basis was such portion of the seventy-eight millions as was taken in exchange or exchanged for Northern Securities stock based or taken? What was the basis of the exchange?

Mr. Harriman: We made no exchange.

Mr. Day: I thought you said——

Mr. Harriman: No; we had no transaction whatever. I think you have got a wrong impression. We had no transaction whatever with the Northern Securities Company.

Mr. Day: You took some stock of the Northern Securities Company in part payment?

Mr. Harriman: What you want to know is what price we took Northern Securities Company stock or agreed to take it at in case it was delivered to us, or any other security.

Mr. Day: Yes, sir.

Mr. Harriman: At par.

Commissioner Prouty: You do not mean to say that you sold Northern Pacific stock at par?

Mr. Harriman: No; that question was not asked. I thought the question was whether what we took was on the basis of cash or Northern Securities at par.

Mr. Day: I understood you to say that you took some Northern Securities in part payment.

Mr. Harriman: Yes, sir; in lieu of cash. We did not make any exchange.

Mr. Day: You did not subscribe?

Mr. Harriman: No, sir; we had no transactions with them.

Mr. Day: When you sold this seventy-eight millions of stock, were you advised or informed by any of the people you negotiated with, directly or indirectly, that that stock was to be turned over to the Northern Securities Company when organized?

Mr. Harriman: I do not remember that we were specially advised. That was generally talked, that there was to be a securities company.

266 Mr. Day: You relied on it that that would be done, did you not?

Mr. Harriman: That did not influence——

Mr. Day: I am not asking that. You did rely on that, did you not?

Mr. Harriman: No; we did not rely on it.

Commissioner Prouty: You mean that you agreed to pay par for the stock of a company that you did not know anything about?

Mr. Harriman: I thought the question was not on that basis. The question was, I think, what influence the sale of this Northern Pacific stock—that there was to be a securities company formed——

Mr. Day: I will ask the stenographer to read the question.

The stenographer read the question, as follows: "When you sold this seventy-eight millions of stock, were you advised or informed by any of the people you negotiated with, directly or indirectly, that that stock was to be turned over to the Northern Securities Company when organized?"

Mr. Harriman: That is not as I understood the question. We knew in a general way, the formation of a securities company was talked about, and we agreed to take in lieu of cash a certain amount of that stock, in lieu of cash, at par.

Mr. Day: Then I asked if you did rely on the statement that a Securities Company was to be formed?

Mr. Harriman: In making the sale?

Mr. Day: Yes, sir.

Mr. Harriman: No.

Mr. Day: I do not mean that that was the moving consideration. Would you feel that you had a cause of complaint against the gentlemen you were negotiating with if that stock had not been put into the Northern Securities Company?

Mr. Harriman: I do not think we would. I do not know any reason why we should.

Commissioner Prouty: Of course, before you agreed to take fifty millions of that stock you knew something about what it was going to be worth. You did not expect that they had a right to put Great Northern stock in at $300 a share. You must have known in some way on what basis that company would be operated.

Mr. Harriman: Yes, sir; in the general talk at that time—the general talk that there was to be — securities company formed.

Commissioner Prouty: Do you engage in transactions of fifty or sixty millions on general talk?

267 Mr. Harriman: Yes, sir; very often.

Commissioner Prouty: Perhaps you had better define what you mean by "general talk."

Mr. Harriman: You mean if there was any specific information given or agreement that there should be a certain amount of Northern Pacific or Great Northern stock put in?

Commissioner Prouty: I think what Mr. Day wants and what the commission would like to know, if it is material at all, is what agreement was made, what understanding was had, as to the organization of the Securities Company, of which you agreed to take the stock at par.

Mr. Harriman: We agreed to take the stock at par if the Securities Company was formed, and the Northern Securities Company stock issued in payment for Northern Pacific stock not to exceed 115, and if the Great Northern were put in that that should not exceed 180. That is the plan.

Mr. Day: You understood that Northern Pacific stock was to be taken at 115 of the other, and you took it at par?

Mr. Harriman: No, sir; I did not say that.

Mr. Day: I mean the Northern Securities; you took that at par?

Mr. Harriman: Yes, sir.

Mr. Day: Oh, yes; I see I was in error.

The Chairman: As I understand Mr. Harriman, he said he negotiated the sale of this Northern Pacific stock when his company decided that it was best to sell it. He reported the terms to his company and they ratified the arrangement.

Mr. Harriman: Yes, sir.

The Chairman: That arrangement fixed a price, and part of it was to be paid in money and the balance in securities, and included in those securities was an agreement on your part to take a certain amount of the securities of the Northern Securities Company, if organized on a certain basis?

Mr. Harriman: Yes, sir.

The Chairman: Subsequently it was organized on that basis.

Mr. Harriman: And the stock was delivered and received.

The Chairman: And you took the stock of the Northern Securities Company in payment of the Northern Pacific stock that you sold?

Mr. Harriman: Yes, sir.

Commissioner Clements: When in the course of these negotiations did it become certain that the Northern Securities Company would be a practical organization—would be effected?

268 Mr. Harriman: In the first place, the talk of forming a securities company—I do not know whether it was the purpose of forming it under the name of the Northern Securities Company or under any other name, but I was generally cognizant of the fact that there had been a plan of forming a securities company for the holders of the Great Northern stock, and I think some time before we had any interest in the Northern Pacific. I think in some of my conversations with Mr. Hill that he had stated to me that he and his associates had a plan in view for forming a securities company, in which they were to put their holdings of Great Northern stock, a long time before we had any interest in the Northern Pacific.

Commissioner Clements: When did you first seriously consider taking any stock in that company yourself or for the corporations you represent?

Mr. Harriman: Only when we sold the Northern Pacific stock.

Commissioner Clements: That was in September?

Mr. Harriman: Whatever the date was that was the time.

Commissioner Clements: When did you procure that stock for the Oregon Short Line or Union Pacific, the seventy-eight millions?

Mr. Harriman: For the Oregon Short Line?

Commissioner Clements: When did you obtain that?

Mr. Harriman: I think the 7th and 8th of May.

Commissioner Clements: You obtained it in the spring?

Mr. Harriman: Yes, sir.

Commissioner Clements: And determined in the fall, about September or whenever it was, to take fifty or sixty millions of the proceeds of that and put it in the Northern Securities stock, not in exchange, but you would sell one and buy the other?

Mr. Harriman: We agreed to take securities and stock with the understanding that it was to be a securities company, if formed.

Commissioner Clements: At the time you purchased that Northern Pacific stock you apparently must have had some substantial reason for apprehending danger to the properties you represented, as you have already stated, as I understand that you deemed it necessary for the full and proper protection of your interests to have a dominating influence in the Northern Pacific Company. Is that a correct statement?

Mr. Harriman: Yes, sir; that is what I said.

Commissioner Clements: Now, apparently in the fall you turned that loose so as to lose that dominating influence, so far as

269 you had obtained it by the purchase of that stock, and there must have been some substantial impression——

Mr. Harriman: May I explain that?

Commissioner Clements: Certainly.

Mr. Harriman: I think the subsequent action of the Oregon Short

Line or the people representing it in what they thought, and I think what was the prevailing influence with them was that the purchase of the Burlington Company by the Great Northern and perhaps the control of the Northern Pacific by one party might injure the Union Pacific or the territory—it might prevent the Union Pacific from properly serving, I might say, the territory through which it runs, and subsequent to the purchase of that stock, I think that our action in agreeing to give our proxy to Mr. Morgan is evidence enough that we were satisfied that there were more interests than the Great Northern or the people affiliated with the Great Northern in the Northern Pacific, and the subsequent management of the Northern Pacific is a further indication that we were right.

Commissioner Clements: When did you give Mr. Morgan that proxy?

Mr. Harriman: The agreement that he should name the board of directors was given in May, about the time that there was this prevailing financial distrust, in which we had no hand, nor any interest, nor any purpose to serve, except, as I have stated before that we should evidence to the whole financial world that there was no intention of creating a contest as against the then managers of the Northern Pacific.

Commissioner Clements: Now, has not the formation of the Northern Securities Company, with an important holding in it by the Oregon Short Line, one of the corporations you represent—the interests under you—a holding in that company of fifty or sixty millions, and the identification of Mr. Hill and his associates, including the Great Northern and Northern Pacific and Burlington, with this same company—all of you associated together—also gone a long way to assure you that there would be no unfriendly action on the part of the Northern Pacific in respect to the traffic?

Mr. Harriman: No more than there has been in existence since the two corporations were organized.

Commissioner Clements: Which two corporations?

Mr. Harriman: I thought you referred to the Union Pacific or the Oregon Short Line and the Northern Pacific.

Commissioner Clements: Well, what I mean is that since
270 you and the interests you represent and the interests represented by Mr. Hill and Mr. Morgan, which include the Union Pacific, the Southern Pacific, and the Oregon Short Line, and now the Great Northern, the Northern Pacific, and the Burlington, are all holding stock in the way that was described yesterday, more or less, in the Northern Securities Company, and Mr. Hill being president of it and you being a member of the board of directors, is there not much less likely to be any friction or contest in the matter of traffic between the Northern Pacific and the Union Pacific and its affiliated lines?

Mr. Harriman: I think it may in this respect, that it may enable us where we are frequently brought together, or when we are brought together, whether frequently or infrequently, it has been very infre-

quently so far, it may enable us to so get together, that we may be able to eliminate the prevailing distrust as to the various lines maintaining their tariff rates. In other words, I do not know that you have ever had before you a complaint of too high a rate, but it is a complaint as to discrimination, and that is all we are trying to eliminate from the situation to-day. I believe this, that in our association, if we will be able to influence the situation to such an extent that we will prevent, or largely prevent discriminations as against the general shipper, and the concessions which are made or said to be made in favor of one shipper as against another—am I not right, Mr. Chairman, that the complaints mostly that come before your body are to the effect that there are discriminations, and not that rates are generally higher than they ought to be?

The Chairman: I must reserve my answer to that question to another time and place.

Commissioner Clements: Will not the same power of co-operation and unity of action and financial association enable you also to prevent the reduction of the published rate?

Mr. Harriman: I do not know that we have power to do that, even if we wanted to.

Commissioner Clements: Well, the carriers are given power to publish the rates, and they publish what they choose to as the rates at which they will carry. They are also authorized to reduce them from time to time or increase them from time to time. Of course there is a general declaration of the law that they shall be reasonable and just, and free from undue discrimination, but now you say that your principal object is to prevent the unjust discrimination.

Mr. Harriman: I did not say we had an object. I said
271 that I believed being brought together would enable us to consider these questions and prevent by our own officials and the officials of other lines their participating in discriminations and illegal—if you are a mind to—illegal practices.

Commissioner Clements: Particularly deviation from the published rate?

Mr. Harriman: Deviation from the published rates.

Commissioner Clements: Now, what I want to know is this: Inasmuch as under the law you make your own rates and change them from time to time, and you have now co-operation—community of interest—financial and organized co-operation in one concern, directing more or less all these roads, by the election of officers, will it not carry with it not only the power to prevent deviations from the published rate, but also the power to hold up the published rate and prevent its reduction by the separate action of competing roads?

Mr. Harriman: I do not quite understand what you mean by "community of interest." I think we all have a common interest, a common interest to increase the volume of business generally. There can not be one railroad, or one community exist at the expense of the other, and it seems to me that whether we meet or happen to meet by an agreement in Chicago or in New York or in San

Francisco, or whether we are brought together in a board of directors of a securities company or a bank or trust company, it makes no difference. If we wanted to practice something that was against the law it would not be necessary for us to form an organization and become directors thereof and advertise it to the world. We could meet anyhow. We have a common interest to preserve—which I think Mr. Hill explained to you yesterday—the avenues of traffic which are natural and over which traffic can be conducted and the products of the producing sections can reach the markets in some other part of the country. I understand your question to be whether it would not give us an opportunity to do something we have no right to do.

Commissioner Clements: In restraint of competition; reducing rates.

Mr. Harriman: May I ask a question, whether it would be any different whether we met at a specific place you may name, whether as a board of directors of a security company or as a board of directors of some corporation, or whether it was by arrangement at some other place other than where the board of directors meet? It would not give us any more opportunity than we would otherwise have were we not members of one board.

272 Commissioner Clements: Well, the ownership of the stock in the one company would be something more potential than a mere coming together as independent representatives of independent roads. There have been many conferences between traffic managers and presidents in regard to these matters, but this is something substantially different, is it not? Here is a corporation the stock of which——

Mr. Harriman: You are talking about the Northern Securities Company?

Commissioner Clements: Yes, sir; the stock of which is held by these various interests.

Mr. Harriman: Yes, sir; but it might be changed at any time. It might be all combined in one holding.

Commissioner Clements: That might be. So might any pooling contract between an association of roads. It might exist to-day and not to-morrow. So long as it does exist, does it not afford a power of concentration and unity of action?

Mr. Harriman: You mean by holding the stock?

Commissioner Clements: The holding of the stock, the joint interest in the matter, and the co-operation that comes from that.

Mr. Harriman: I think there are other and larger considerations which move the management of these properties other than the holding in any security company. As I have tried to explain, the matters practically control themselves in the end. There are commodities to be moved. There is productive territory. The products of one territory have to be shipped to consuming points, which may be thousands of miles away. We could not control it any more by meeting in that board of directors and having an interest—whether

it was a large or small interest—in that stock any more than we could if we did not.

Commissioner Clements: In times past, when these roads have been separate in ownership and operation, they have reduced rates in order to get business, one road away from the other. That has been the operation of competition in the past. Does not this directly tend to restrain that by the co-operation brought about?

Mr. Harriman: You mean reducing the published rates?

Commissioner Clements: Yes, sir.

Mr. Harriman: I do not think it will, nor do I know in any case where it has.

Commissioner Clements: Do you mean to say that there will be the same freedom and activity and competition, in your judgment—is that what you state now—that there would be if these roads were entirely separate and independent of each other?

273 Mr. Harriman: They are entirely separate and independent of each other.

Commissioner Clements: They are in a technical sense, and at the same time you are president of the Southern Pacific and also chairman of the board of the Union Pacific, as I understood your testimony.

Mr. Harriman: Yes, sir.

Commissioner Clements: And president of the Oregon Short Line?

Mr. Harriman: President of the Oregon Short Line. They are all connecting lines and feed to each other.

Commissioner Clements: Yes, sir; and they have been competing lines, have they not?

Mr. Harriman: Not to my knowledge any more than now, and more than the situation of the lines makes it necessary.

Commissioner Clements: You do not mean to have us understand that Mr. Stubbs, as traffic director of these lines, would make one compete against another in the reduction of rates?

Mr. Harriman: I do not know of any territory that one or the other serves that would make that necessary.

Commissioner Clements: Well, the traffic from the eastern coast to the western coast could go by the Southern Pacific or the Union Pacific, or by the Oregon Short Line in connection with other roads?

Mr. Harriman: On a published tariff?

Commissioner Clements: Yes, sir.

Mr. Harriman: I do not know an instance where a shipment was changed in that way. I think we would hear from the shipper if it was so. Because of the interest that the Union Pacific acquired in the Southern Pacific I believe it is going to enable the Union Pacific or the combined interests to give very much better service, and enable them to improve the lines of the Southern Pacific to such an extent that it can be operated to better advantage and possibly more economically. If these matters are not brought about

that way I do not see how the railroads will exist, and they will not be able to take care of an increased volume of business any cheaper or as cheap as they are to-day. You may separate all these lines that now make up these different systems. Formerly there may have been ten times more than to-day. If you want to separate them and put them into small lines I do not think the business of the country could be conducted. We are natural connections of the Southern at one point and do not interfere with it in any
274 way at any other point. We may develop in connection with the Southern Pacific new avenues, which will reach also the Northern Pacific territory. That is a thing I had in mind. We are now extending a line of the Oregon Short Line from a point in Nevada to southern California.

It will open up an entirely new avenue of traffic between the Northwest and southern California, New Mexico, and those southern points and the territory served by that portion of the Southern Pacific, and enable us to interchange commoditjes with points which are on the Oregon Short Line, owned by the Union Pacific, points on the Northern Pacific over the Short Line, and also new avenues of traffic and new markets for commodities in all the territories served by all those companies. How could we do that if we did not have a close affiliation? Would it be possible to put a middle company in between the existing Short Line and the Southern Pacific in southern California?

Commissioner Clements: Those matters are all interesting and instructive, and no doubt——

Mr. Harriman: You are trying to find, apparently, something that was in our minds in making these affiliations.

Commissioner Clements: The change in the conditions and the opportunities that it afforded—not whether you heard particular complaints or whether or not you have raised the rate here and there, but what I am trying to get at is your judgment as to whether or not this community of interest, as it may be termed, by the holding of stock——

Mr. Harriman: May I not change that into a common interest? I think we have a common interest; not only the railroads, but the producers.

Commissioner Clements: Put it that way. I mean the common interest as it is concentrated now in the Northern Securities Company. I am talking now of the interests of carriers separate from producers and shippers. Has it not placed it in such way that it will be feasible and practicable in a much greater degree than before for carriers to prevent deviations from the published rate and also to prevent reductions in the published rate by the separate action of each of them?

Mr. Harriman: I think not.

Commissioner Clements: You do not think there is any greater opportunity for that than before?

Mr. Harriman: I think not.

Commissioner Prouty: Mr. Harriman, you say it is for the interest of railroads that traffic should move by its natural chan-
275 nels. For instance, take cotton raised in Texas and the Southern States. Is the natural channel by which that cotton is moved from this country to Japan by the Southern Pacific or by the Great Northern?

Mr. Harriman: I think that would be controlled largely by the prevailing conditions at the time that commodity was to move.

Commissioner Prouty: Both of those roads could take it?

Mr. Harriman: Yes, sir.

Commissioner Prouty: And both would probably be competitive for it. Don't you think that out of that competition the cotton grower would be likely to get a better rate to Japan than if you owned both roads, or Mr. Hill owned both roads?

Mr. Harriman: I think if Mr. Hill, myself, or any other man owned all of the railroads that they would get a very much better rate than they would if they were separate.

Commissioner Prouty: Why?

Mr. Harriman: For the reason that the conditions prevailing on each line could be taken advantage of in favor of a particular shipment. We have often had conditions where we could induce the shipment of cotton or any other commodity where we have a prevailing movement of empty cars one way or the other; and with a freer hand I believe the railroads could increase the movement of commodities from one part of the country to the other, to Japan, or any other foreign country, if we had less restriction and could have more elasticity than is now given them in the matter of giving rates at any particular time.

Commissioner Prouty: Just assume, for instance——

Mr. Harriman: One moment, please. I think Mr. Hill explained that yesterday; that commodities of the Northwest have to be moved to points on the Chicago, Burlington and Quincy railroad; they have to be moved to points on the Union Pacific railroad, and the prevailing movement of empty cars the other way would influence the rate at any particular time, which could be given to cotton or to anything else.

Commissioner Prouty; Take cotton. Suppose you owned all of the transcontinental roads, so that a man could not get his cotton across the country unless it went by your road; why would you reduce his rate?

Mr. Harriman: Because it would be to our interest to make such a rate as would induce the movement of that commodity.

Commissioner Prouty: If by reducing the rate you could increase the movement or volume, it would be to your interest to reduce the rate and you would reduce it?

276 Mr. Harriman: Yes, sir.

Commissioner Prouty: Unless you could increase the volume of traffic, you would not reduce the rate?

Mr. Harriman: It would not move. The same principle that

would induce the rate that was made on the first bale of cotton would influence the rate which was made on a million bales of cotton. You would have to make a rate in the first instance that would enable the producer to ship his commodity.

Commissioner Prouty: So you do not think, Mr. Harriman, that competition between different lines would reduce the rate on cotton—competition itself?

Mr. Harriman: I think it is only temporary.

Commissioner Prouty: I will take another illustration that you may know something about; I guess you do. Take the movement of grain from the Mississippi river to the Atlantic seaboard. Some years ago this commission made an order—before I came on it—that corn should be transported from the Mississippi river to New York for 17 cents per hundred pounds, and the railroads of this country said it was confiscatory. Four years ago, in the winter time, when there was no competition by water, there was a published rate in effect from the Mississippi river to New York of 13½ cents per hundred pounds, and we had an investigation to determine why that rate was 13½ cents, and every railroad man that testified on that occasion testified that there were no market conditions abroad that required it—that it was entirely competition between rail lines.

Mr. Harriman: Who benefited by it?

Commissioner Prouty: I am not asking who benefited by it.

Mr. Harriman: I cannot account for the inequalities or stupidity in railroad management.

Commissioner Prouty: I am not asking about stupidity. I am talking about the rate. What was it that reduced that rate to 13½ cents if it was not railroad competition.

Mr. Harriman: May I ask you another question? Did the rate stay at that point?

Commissioner Prouty: The rate stayed a great deal lower than it had been before

Mr. Harriman: I confess that there are matters in railroad management which I cannot understand. I do not pretend to be an expert traffic man; but I know what the shipper wants and the railroad wants is stability, and that there are special instances, such as you cite now, where there are reductions in rates because of the then specially existing condition. Now, if we could, as I
277 said before, have a little elasticity—there may have been in that instance, I do not know, a movement of empty cars east bound which enabled them to take the commodity at that rate you named. I do not know what the conditions were at that time, but that might have been the influence of one railroad.

Commissioner Prouty: Those conditions prevailed for two or three winters.

Commissioner Clements: Every year when the lake is frozen up the rates go up on the railroad, I understand, and when the lake is open the rates go down. That must be the influence of competition.

Mr. Harriman: Is it not a fact that there is a larger volume moving in any event during the time of navigation than there is after navigation is closed? That enables them to make a more attractive rate.

Commissioner Prouty: You have said, and repeatedly, that the railroad was interested and the public was interested in having these systems developed and put into first-rate shape. That is undoubtedly true. That is because the public is interested in the rate at which merchandise finally moves, is it not?

Mr. Harriman: No; not only in the rate, but in the facilities furnished and the regularity of movement as much as in the rate. There is no advantage to a shipper if he is shipping his goods at a favorable rate if he is not well assured that that particular commodity will reach its destination within a reasonable time.

Commissioner Prouty: If your rate from here to Denver was 5 cents higher than rates by other lines, how much stuff do you think you would ship?

Mr. Harriman: I think that 5 cents is a little out of proportion. We might get a little more if we had better facilities, but 5 cents is out of proportion.

Commissioner Prouty: You know, Mr. Harriman, that competing rates have to be practically the same between the same points. You do not rely on facilities to enable you to secure a better freight rate, do you ordinarily?

Mr. Harriman: No; but what I have been trying to illustrate is that by having better facilities and more economical methods for transporting our business that we would be enabled to make better rates; but if we have destructive competition and irregular rates we will not be able—as it has been in the past—we will not be able to give the facilities to continue the increase in the volume of business all over the country.

278 Commissioner Prouty: Is not the thing — which the public is ultimately interested the rate?

Mr. Harriman: No, sir; not absolutely.

Commissioner Prouty: Well, pretty near.

Mr. Harriman: Not pretty near.

Commissioner Prouty: Do you think you can charge a higher rate than your competitor, no matter what facilities are?

Mr. Harriman: I think there are certain conditions. One manufacturer can give better goods and get a higher price.

Commissioner Prouty: If the public is interested along with you in rates and facilities, why should not the public have some voice in determining and supervising the rates?

Mr. Harriman: They have. They practically make it.

Commissioner Prouty: What do you mean?

Mr. Harriman: Apparently a shipper in the past has been able to make the rate.

Commissioner Prouty: Name some rate.

Mr. Harriman: I do not know. I am not a traffic man.

Commissioner Prouty: Mr. Stubbs is.

Mr. Harriman: Don't I understand, as it exists to-day, that if any unequal condition that exists any shipper can make a complaint and have his case brought before a court to adjudicate the same at the expense of the railroad against whom the complaint is made. Am I not right?

Commissioner Prouty: I won't undertake to answer that question. But I would like to have you do this: I would like to have you consult your attorneys and file as a part of your examination here a reference to some case in which a court has rendered a final judgment correcting a rate, a discriminating rate. I do not speak of those States in which there is a commission which has power to fix rates, but I speak of interstate rates of vital importance to the public, and rates in those States where there is no commission with power to fix rates. I would like to have you file a reference to some one case of that sort.

Mr. Harriman: I do not know of any that has been brought. I am asking you. I am not as familiar with that as you are.

Commissioner Prouty: I think as you do with reference to a part of this question, that unless these consolidations and unifications result in the overcapitalization of our railroads they are good for the country and a good thing for the carriers. I think that they may result in imposing on the public, and have resulted in some cases in imposing upon the public, an unjust rate.

Mr. Harriman: May I ask you——

279 Commissioner Prouty: Just a minute. I think the public ought to have some means by which a shipper can complain and by which, if his complaint is found to be reasonable, he could get relief. I do not think he has any such relief now.

Mr. Harriman: Do you know of any special case where you fear that there may be some discrimination or some hardship?

Commissioner Prouty: I do not think that the discrimination between shippers is so likely to take place after consolidation as before. I think the hardship is likely to come from the charging of too high a rate.

Mr. Harriman: It has not in the past.

Commissioner Prouty: I am not quite certain about that.

Mr. Harriman: Can you give me an instance?

Commissioner Prouty: I will give you an instance without saying whether it is in point or not. The actual rates from Buffalo to New York for three or four years had been on corn 2¾ cents a bushel, something higher on wheat. Two years ago you organized up there, or the railroads organized up there, what is called the Buffalo Grain Pool, and the sworn testimony before this commission is that the pool absolutely eliminates competition on ex-lake grain from Buffalo to New York, and that its effect has been to raise rates from one-half to 1 cent a bushel, which amounts on all grain moving through Buffalo in a year to a million and a half dollars. The rate is that

much higher without competition than it was with competition. I do not say it is unreasonable.

Mr. Harriman: You do not say it is unreasonable?

Commissioner Prouty: I do not express any opinion about it.

Mr. Harriman: You do not ask me to?

Commissioner Prouty: No; I do not ask you to.

The Chairman: Is there anything further you desire to ask, Mr. Day?

Mr. Day: Yes, sir; you said when my examination was broken that you got part cash and part stock for the sale of the $78,000,000 of Northern Pacific stock?

Mr. Harriman: Part cash and part securities.

Mr. Day: What became of the cash?

Mr. Harriman: It was used to pay the obligations of the Oregon Short Line—money which they had borrowed to pay for the Northern Pacific.

Mr. Day: And none of it went back into the treasury?

Mr. Harriman: The treasury of the Oregon Short Line and was used—

280 Mr. Day: Used to pay any of the $61,000,000 or the securities, certificates, or obligations of the Short Line that had been put out to raise these $78,000,000?

Mr. Harriman: Had that been reduced? I think not.

Mr. Day: You said that the subsequent management of the Northern Pacific showed that subsequent to the election of the new board of directors that you were right—that the Union Pacific interests were right—in turning the property over to the stockholder, Mr. Morgan. What did you mean by the subsequent management of the Northern Pacific that justified your action?

Mr. Harriman: Perhaps the subsequent management might have been the continuation of the same management.

Mr. Day: Is that what you meant?

Mr. Harriman: That is what it was.

Mr. Day: Has any agreement been made, or any understanding been entered into, regarding a division of trans-Pacific traffic between the Southern Pacific and the Union Pacific?

Mr. Harriman: No, sir.

Mr. Day: Or between the Southern Pacific and the Union Pacific and the Atchison?

Mr. Harriman: No, sir.

Mr. Day: Or with the Northern Pacific or Great Northern or the Canadian Pacific?

Mr. Harriman: Not that I know of.

Mr. Day: You are not a party to it and have no knowledge of it?

Mr. Harriman: I have no cognizance of it.

Mr. Day: Has there been any change in the routing of traffic or regarding rates, division of traffic, or pooling of traffic, since you assumed the management of the Union Pacific system?

Mr. Harriman: Not to my knowledge.

Mr. Day: The Union Pacific is just as independent and is operated just as independently of the Southern Pacific as before the union of interests?

Mr. Harriman: I do not know of any instance where there has been any change.

Mr. Day: And the same is true of the Union Pacific and competing lines to the northward? They are just as independent of each other as they were prior to this union of interests?

Mr. Harriman: There has not been any union of interests.

Mr. Day: Whatever results from the interlacing of stock.

Mr. Harriman: So far as I know, the relations of the companies are on the same basis as before.

281 Mr. Day: Does the Union Pacific stand in a better position to get traffic that formerly went by the Southern Pacific? Does it now?

Mr. Harriman: I do not think so.

Mr. Day: The Southern Pacific is not used to—or the traffic is not diverted from the Southern Pacific to the Union Pacific proper?

Mr. Harriman: No, sir.

Mr. Day: Nor *vice versa?*

Mr. Harriman: No, sir.

Mr. Day: That is all I wish to ask.

The Chairman: Mr. Harriman, about when did your connection with the Union Pacific system begin?

Mr. Harriman: Just after the reorganization, I think, in 1898.

The Chairman: You at that time acquired a large interest and became the chief executive officer?

Mr. Harriman: No; I became a member of the board of directors and a member of the executive committee. I was made chairman of the executive committee and preside at meetings of the committee.

The Chairman: And that is the relation which you have since sustained to that system?

Mr. Harriman: Yes, sir.

The Chairman: And that relation has been practically the same from the time of the reorganization down to the present?

Mr. Harriman: Down to the present time.

The Chairman: And that was of course, before the acquisition of any of the Southern Pacific stock by the Union Pacific?

Mr. Harriman: Yes, sir.

The Chairman: At the time the Union Pacific began to acquire stock of the Southern Pacific had you individually any interest in the Southern Pacific?

Mr. Harriman: No, sir.

The Chairman: You had not been connected as a stockholder or otherwise with the Southern Pacific system?

Mr. Harriman: Not as an officer in any way. I might have had an interest in Southern Pacific stock at some time, but I do not

remember that I had. If so, it was so small as not to have had any influence at all.

The Chairman: You have had to do with deciding upon the policy of the Southern Pacific after acquiring that large interest in the Southern Pacific which was acquired?

Mr. Harriman: Yes, sir.

282 The Chairman: Your testimony may have covered the point I have in mind in a general way, but I desire to ask you what was the direct purpose in acquiring that interest in Southern Pacific stock?

Mr. Harriman: To prevent its control by some other line that might have diverted the business into other channels against the Union Pacific system.

The Chairman: Had you reason to apprehend that the Southern Pacific might fall into such unfriendly hands?

Mr. Harriman: It might have. We had no reason to suppose that any other company were acquiring it, but it was not advisable for us to wait until somebody else moved.

The Chairman: You were not moved by immediate apprehension or by knowledge of efforts being made on the part of others?

Mr. Harriman: As you remember, the principal holder of Southern Pacific stock had recently died, and there was a chance always of that stock being disposed of to some interest that might have been adverse to and prevented the free interchange which had formerly existed between the two companies.

The Chairman: It was on general grounds and for the future prosperity of the Union Pacific road?

Mr. Harriman: Yes, sir; and we believed for the future prosperity of the Southern Pacific.

The Chairman: And that was the sole inducement on the part of the Union Pacific to acquire this large interest in the Southern Pacific?

Mr. Harriman: Yes, sir; to preserve the then existing conditions.

The Chairman: The Southern Pacific at that time owned the line from San Francisco to Ogden?

Mr. Harriman: Yes, sir.

The Chairman: The Union Pacific and its connections could not reach the Pacific coast over its own rails except at Portland?

Mr. Harriman: Well, it does not now. It could by building a railroad.

The Chairman: Except as it controls the Southern Pacific.

Mr. Harriman: That is all.

The Chairman: Before you acquired control in the management of the Southern Pacific you could not reach by your own rails the Pacific coast at any point south of Portland?

Mr. Harriman: No more than we do now.

The Chairman: So that all transcontinental traffic which
283 reached the Pacific coast at points south of Portland, passing over the Union Pacific, had to go from Ogden on the Southern Pacific rails?

Mr. Harriman: There was no other way provided for it then; naturally it must, no matter who owned it.

The Chairman: Did that give the Southern Pacific the position which enabled it to control transcontinental rates upon the Union Pacific route?

Mr. Harriman: I think not.

The Chairman: Then, is the present control of the Union Pacific system over transcontinental rates by the Union Pacific route no greater than it was before the Union Pacific acquired this interest in the Southern Pacific?

Mr. Harriman: I think not. Understand me; I have already explained that in these matters the traffic officers and executive officers of the various companies have to be communicated with and——

The Chairman: I understand that.

Mr. Harriman: All has to be done by conference with the managers of those various lines, the same as it had to be before, to arrange the divisions.

The Chairman: In point of fact, Mr. Harriman, has there been any change in transcontinental rates since this acquisition by the Union Pacific of Southern Pacific stock?

Mr. Harriman: I understand that Mr. Stubbs was on the stand yesterday. I did not hear his testimony and I have not had any conference with him, and he would be the proper one to answer that.

The Chairman: You do not know?

Mr. Harriman: No, sir.

The Chairman: You do not know of any change?

Mr. Harriman: No, sir; I do not.

The Chairman: Either by increase or reduction?

Mr. Harriman: In any way whatsoever.

The Chairman: Is it your understanding that your rates and basis of rates to-day are the same as they were before the Union Pacific acquired the interest in Southern Pacific stock?

Mr. Harriman: I do not know of any change whatever.

Commissioner Prouty: How about the maintenance of rates? Are rates better maintained or not so well maintained as they were?

Mr. Harriman: As between the transcontinental routes, do you mean?

284 Commissioner Prouty: Transcontinental rates.

Mr. Harriman: I do not know of any change whatever.

Commissioner Prouty: I did not understand exactly what Mr. Stubbs's duties were. He is the traffic director of these two companies. Has he power to do anything except to tell somebody what he thinks had better be done?

Mr. Harriman: He has the power, as far as possible, to unify the management of the different officers by conference with the officers of these various companies.

Commissioner Prouty: Suppose Mr. Stubbs thinks some rate ought to be changed on the Southern Pacific system, has he any power to change it?

Mr. Harriman: I think Mr. Stubbs's influence on the Southern Pacific could enable him to change it. He has no power, as I understand it, to issue a tariff. There is a traffic manager of the Southern Pacific.

Commissioner Prouty: You think, then, if Mr. Stubbs's reasons were sufficiently cogent, he could influence the traffic manager to change the rate?

Mr. Harriman: Yes, sir.

Commissioner Prouty: On the Union Pacific is that the same?

Mr. Harriman: Yes, sir.

Commissioner Prouty: Practically Mr. Stubbs can make the rates on the Southern Pacific and the Union Pacific?

Mr. Harriman: I should think he could.

Commissioner Clements: Mr. Stubbs told us yesterday that these roads, and probably all the transcontinental roads, had a joint agency at San Francisco, or that there was an understanding in practice whereby no one would reduce a rate except through this joint agency after notice to competing lines. Don't you think that tends to hold up rates?

Mr. Harriman: To keep rates stable.

Commissioner Clements: Don't it tend to prevent reduction of the published rate?

Mr. Harriman: I do not think it does. I do not know what Mr. Stubbs testified to, but whatever his testimony was, I think he ought to be questioned on it. I am not familiar with those details of traffic matters, but Mr. Stubbs's general powers are that he shall have the general supervision, in co-operation with the managers, of the various lines.

Commissioner Clements: You have asked us some questions, one of which was whether we believe there were any unreasonable rates and also in respect to the effect of association in regard to the
285 raising of rates and keeping rates up. Now, it is a pretty well-known fact, I suppose, in New York and throughout the country, that about two years ago, when the volume of traffic began to grow immensely, after the depression, that the carriers, particularly in trunk-line territory, got together and through their classification committee raised hundreds of articles from one class to another. They took articles of great importance out of the commodity list and put them at a higher rate in the class list. It effected something like eight or ten hundred changes by one paper that was issued, ninety per cent. of which, or more perhaps, were increases, and some of which were increases in the rates over what they had been for fifteen years previous to that—an average in-

crease on the whole of the articles changed was about 33 per cent. That was done by a representative committee of some sixty-odd roads which adopted the classification. I call that to your attention as an illustration of what can be done by co-operation, community of interest, or joint interest, or common interest of the carriers, when they get together to prevent competition and get a better rate.

Now, laying aside for the time being the question of whether the rate was too low before or not, the shipper under the law is declared to have the right to a reasonable rate. Must he look always to the judgment or discretion or generosity or conscience of the railroad manager in order to get his just rate? If in the present state of the law competition is to be eliminated in this way, will he not be left entirely to that tribunal to get his rate?

Mr. Harriman: I do not understand that he is at present left to that tribunal, if there is such a tribunal. But it seems to me that if that rearrangement of the various commodities was made and there has been no evidence of any dissatisfaction, that in itself is evidence that it was reasonable.

Commissioner Clements: There was a multitude of complaints brought before the commission, five or six hundred, by wire and letter and by all known means of communication, and several formal complaints have grown out of it since.

Mr. Harriman: Are they still in process of being adjudicated?

Commissioner Clements: They are in process of adjudication.

Mr. Harriman: Are they going to be adjudicated?

Commissioner Clements: The commission will report upon them when they are finally argued. These cases are tedious, and voluminous testimony has been taken and at various times. All of this suggests that if there is to be any remedy for the public against the exaction of unreasonably high rates the shipper must
286 have the rate before he ships, because the merchant and business man—I think you will agree with me—cannot very well conduct his business on rates which he must pay and then take his chances of getting a part of it back by some process in court, which would require perhaps a suit on each transaction, and the amount involved would not pay for the suit; it is cheaper for him to lose it than to try to get it back.

Mr. Harriman: As I understand, the railroad in that case has to bear the expense of the suit.

Commissioner Clements: If he gets judgment, the company would.

Mr. Harriman: I understand, whether or no, the expense of that suit has to be provided by the railroad complained against.

Commissioner Clements: That is not the law, that I know of.

Commissioner Prouty: Where will that suit be brought?

Mr. Harriman: Now you are getting me into a tangle of things that I do not know about. I am attending to the everyday matters of these corporations that come before me.

Commissioner Prouty: You are looking after the railroad interest and letting somebody else look after the public interest?

Mr. Harriman: No; I am looking after the public interest too, because they are both common.

Commissioner Clements: There is a difference between the rate that traffic will bear and the rate that is reasonable. In answer to a question this morning you said it would not do to make a rate too high; that the traffic would not move; that you would not get the business. It will move at a high rate sometimes, perhaps, because it is of no value unless it does move, provided there is something left the shipper after he pays the rate; but that would not be the measure of the reasonableness of the rate. It was said by Mr. Hill at some time—I do not know whether in this investigation or not—that the increase of 1 mill per ton per mile—it seems very little—would aggregate to the roads of the country $165,000,000 and take from the public $165,000,000, at a mill a ton.

Mr. Day: Per mile?

Commissioner Clements: Per mile.

Mr. Harriman: Or 1 cent for moving 1 ton 10 miles. It is a little plainer to understand.

Commissioner Clements: $165,000,000 is a great deal of money, and yet that would not seem like a very great increase in the rate per ton per mile. It illustrates the extent to which a little stiffening up of the rates by diminution of competition may bring about a very great result in dollars and cents.

287 Mr. Harriman: Would not the reverse of that be a fact if the rate were reduced a mill or 1 cent for moving a ton 10 miles?

Commissioner Clements: Undoubtedly.

Mr. Harriman: It only shows, it seems to me, how the management of these railroads has become refined down to such a fine point, and that they have got to a point where they have got to have some method of preserving their existence. In other words, the manufacturer to-day is dependent upon the railroads as his principal customer. I undertake to say that the increase in volume of business this year is largely because of the improvement and additions to the railroad properties as they exist to-day, and the rates that are made are made sometimes as against themselves.

The Chairman: Have you any further questions, Mr. Day?

Mr. Day: I have nothing more.

The Chairman: Mr. Harriman, do you wish to make any further statement?

Mr. Harriman: No, sir; except to thank the commission for excusing me in time to catch my train.

Witness excused.

Testimony of Edward H. Harriman, taken by and before a special master, in the suit of The State of Minnesota *vs.* Northern Securities Company and others, in the circuit court of the United States for the district of Minnesota, and introduced in evidence by the defendants in the suit of the United States against Northern Securities Company and others, in the same court.

Room 70, Federal Building, City of New York.

DECEMBER 1, 1902—11 o'clock a. m.

The hearing was resumed at this time pursuant to adjournment, all parties being represented.

The defendants offered as evidence in this case the testimony given by E. H. Harriman, in the city of New York, in the case of The State of Minnesota *vs.* Northern Securities Company. Said testimony was received without objection, and is as follows:

"E. H. HARRIMAN, being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination.

By Mr. MUNN:

288 Q. Mr. Harriman, you are a member of the board of directors of the Union Pacific and chairman of its executive committee, I believe?

A. Yes, sir.

Q. You are also officially connected with the board of directors and the executive committee of the allied interests of the Union Pacific?

A. Nearly all of them.

Q. And you held such position during the year 1901?

A. Yes, sir.

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about 78 million dollars, par value?

A. Yes, sir.

Q. And that stock stood in your name and that of Mr. Pierce, holding it for the interests that you represented?

A. Yes, sir.

Q. Did J. P. Morgan & Company, or any member of that firm, open negotiations with you looking to the purchase or acquisition of such holdings during the fall of 1901?

A. Does it make any difference whether I opened the negotiations with them or they with me? I don't remember. It was either one or the other. The negotiations were opened. Or they may have

been opened by some intermediate party. I don't remember just how it was.

Q. At what time were those negotiations opened?

A. It would be difficult for me to state within a month. It was September or October, I should think.

Q. It was either during the month of September or October, 1901?

A. I should think so.

Q. How long did those negotiations continue before they were finally consummated?

A. I should think about a month or six weeks, possibly two months.

Q. With whom did you have your first dealings in those negotiations, if you remember?

A. I couldn't remember.

Q. Was it with Mr. Bacon, of J. P. Morgan & Company?

A. I had many talks with Mr. Bacon. I had talks with nearly every member of the firm.

Q. In these negotiations were they acting for themselves or acting with the understanding that these securities or this stock was to be turned over to some holding company when organized?

289 A. They never disclosed to me whether they were acting for themselves or somebody else.

Q. Before the negotiations were finally closed was it understood that you were to take some stock in a company to which this stock was to be transferred?

A. That is my recollection.

Q. And was that the Northern Securities Company?

A. It was never designated by any name.

Q. You didn't learn what company was to take it until you received the stock of that company in exchange?

A. Practically at that time.

Q. Did you understand from the beginning of these negotiations, that this stock was ultimately to be turned over to some holding company which was to be organized?

A. No, I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever differences we might have in regard to that stock, whether it was to be taken by them or by a holding company, or how it was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made that payment should be made partly in cash and partly in a holding company stock. I think it was just towards the end of the negotiations when we were considering whether we would break away or get together on it.

Q. Well, did you understand at any time that they were acting for themselves in the matter and expected to take the stock themselves?

A. I had no understanding upon that subject.

Q. They were simply trying to secure this stock on some basis, then?

A. That is the substance of it.

Q. And it was not until toward the end of the negotiations that you learned they were acting for some holding company?

A. I didn't say I understood they were acting for a holding company. They didn't disclose to me that they were acting for anybody else at all during the negotiations.

Q. Well, you finally learned that the stock was in fact to be turned over to a holding company?

A. There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares in the stock of a holding company so much, and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company or whether they would hold it themselves; but they would give us that holding company's stock in part payment.

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Q. When did you learn that? How long before you actually delivered the stock?

A. Before we delivered our shares?

Q. Yes.

A. It was several days. I don't remember just when. Perhaps two or three days. It may have been within three or four days, or perhaps two days. I have a great deal to do, Mr. Munn, and since our talk the other day I have been trying to refresh my memory on this very thing; but I was pretty busy in other matters at that time, and have been since.

Q. When you found that you were to take the stock of some other company in part payment for this stock, of course you knew then that they were acting for a holding company, did you not?

A. I don't see how I could know.

Q. Well, did you, Mr. Harriman?

A. No, I don't see how I could.

Q. When did you first learn that this stock was to be delivered to the Northern Securities Company?

A. When it was delivered.

Q. That was the first you knew about that?

A. That is my recollection. The first I knew was when it was delivered to that company.

Q. When did they first make a proposition to you to make payment for this, or part payment for it, in the stock of some other company?

A. I think that was towards the end of our various conferences and negotiations, as I said; within a few days, perhaps, of the time the thing was absolutely closed.

Q. Now, during these various conferences you had when these negotiations were pending what was the talk about payment for

your stock? Was it to be paid for in cash, or how were they to pay for it?

A. I don't recollect that there was anything said as to just how it was to be paid for until towards the end.

Q. What did these negotiations relate to then? Whether you would surrender your stock or give it up?

A. Whether we would do anything with our stock except to stand where we were on the basis of holding preferred and common stock.

291 Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?

A. Practically that is what we thought.

Q. And did they contend that they had the right to retire this preferred stock which you held without your consent?

A. Yes, sir.

Q. That contention was made during these negotiations?

A. I think steps were taken to retire it before the negotiations were ended.

Q. You mean that official action had been taken, or that they told you they were going to retire it?

A. I think action had been taken.

Q. The record shows that the action taken to retire the preferred stock was on November 13, 1901.

A. It was about that time, then.

Mr. YOUNG: And the record shows that your sale was closed after the 15th.

WITNESS: Then I say it was practically about that time.

Q. When in these negotiations did you first learn that they intended to retire the preferred stock?

A. I think when the action was taken.

Q. Up to that time, then, you supposed you had a controlling interest in the Northern Pacific by your holdings?

A. Yes, sir.

Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a controlling interest in the Northern Pacific and supposed you had it, and no questions were raised about that retirement?

A. Well, of course it was stated to us that this preferred stock could be retired.

Q. Who made those statements?

A. Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time, that that was the intention. But of course the actual steps taken for that purpose were not taken until about that time we made our trade. And if they hadn't been

taken and it hadn't been retired, we probably would have been in control.

Q. You understood, then, during these negotiations and prior to the time you closed the transaction——

292 A. That there was a probability——

Q. —that there would be an effort made to retire that stock without your consent?

A. A probability of it, yes.

Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company, with whom you negotiated, state to you that they intended to do that?

A. I imagine they did. I don't remember just what——

Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not?

A. Practically.

Q. When did this discussion regarding the retirement of the preferred stock first come up, as you remember it?

A. I think in the summer of 1901.

Q. So you had that in mind, when negotiations were first opened between yourself and the firm of J. P. Morgan & Company, of course?

A. I presume that that was one of the influences. I don't know whether I had it in mind or not. I didn't know just what we would do.

Q. At the time you finally consented to accept in part payment for your holdings stock in a holding company, did you insist upon any basis on which any other stock of the Northern Pacific Railway Company should be acquired by that holding company?

A. No, sir.

Q. You finally agreed to turn in your holdings and receive from the Northern Securities Company upwards of 82 millions in stock of this company?

A. Yes, sir.

Q. Did you know at that time on what basis this holding company was to take in any other Northern Pacific or Great Northern stock?

A. Yes, sir.

Q. On what basis?

A. $115.

Q. For the Northern Pacific?

A. Yes.

Q. And what for the Great Northern?

A. $180.

Q. Did you make any request or demand that they should not take any of the stock of either one of these companies at a higher rate than that?

A. No, sir.

293 Q. Did you understand that they would not?

A. I did not.

Q. Were you willing to surrender your holdings to a company and allow it to determine whether they would exchange their stock with some other holder for twice the amount that you were getting?

A. Not if I supposed they would do it. But there was no stipulation.

Q. Well, you understood they would not?

A. I don't think the thought crossed my mind.

Q. Did they represent to you that that was the basis on which they were going to take in the stock?

A. The statement was made to me that they would put this Northern Pacific stock into a holding company and give us—not this Northern Pacific stock—but that they would give us in part payment a holding company's stock on the basis of $115 for Northern Pacific, and, if Great Northern were taken in, on the basis of $180 for Great Northern. They didn't state how much they were going to take in, or how little they were going to take in. Nor did I ask them to stipulate that they would not take any more than a certain amount or to agree to take a minimum amount. The statement was simply made that they were going to form a holding company, or had formed a holding company, and would pay us in this stock, and that those were the terms on which it was to be bought.

Q. Did they state to you that if they took in any other stock than what you would surrender to the holding company they would take it on the basis of $115 for the Northern Pacific and $180 for the Great Northern?

A. I don't think that statement was ever made. It was a simple statement that they were going to change these shares of Northern Pacific and Great Northern on such a basis, and that they would make us part payment in that stock.

Q. That is what I want to get at. They told you, then, that certain holders of the stock of the Great Northern and the Northern Pacific were going to exchange their stock for the stock of the Northern Securities Company, on the basis of $115 for the Northern Pacific and $180 for the Great Northern?

A. They didn't say certain ones were, but they were going to form this holding company, and that they would pay me in the holding company's stock, which stock should be issued on that basis. They didn't say that they had agreed to exchange certain stock.

294 Q. No, but what I want to get at is this. Didn't you understand from their statements that the basis of exchange, if any was made, was 115 and 180?

A. Yes.

Q. That is, 115 for Northern Pacific and 180 for Great Northern?

A. Yes.

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You didn't know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock, either, were you?

A. No, sir.

Q. Did you make any inquiries regarding who were to be the officers of the holding company, or where it was to be incorporated, or the amount of its capital stock, or anything of that kind, before you agreed to accept its shares in part payment for your holdings?

A. I don't know that I made any inquiries. I presume there was considerable talk about it, but I don't remember that I made any inquiry from anybody.

Q. Do you remember any statements made by persons with whom you negotiated or by Mr. Hill or his associates, who ultimately formed this company, as to where it was to be incorporated, or the amount of capital stock, or its officers?

A. All I remember is just as I have stated: a statement made to me that if this trade went through they would pay us in the shares of a holding company which would issue its stock in exchange for Northern Pacific at 115 and Great Northern at 180. And I agreed to take so much of that stock in exchange for the shares of the Northern Pacific we held—all the Northern Pacific we held.

Q. But you made no inquiries as to where the corporation was to be formed or the amount of its capital stock?

A. I knew, of course, the amount of the capital stock; but I didn't go into the particulars of the formation of the company at all. That may seem strange. But in the enormous transactions we have down here we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

295 Q. Did you finally consent to surrender your holdings on the basis on which you did because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away from you the controlling interest in the stock of the Northern Pacific?

A. I think I recollect pretty clearly that from our standpoint we thought it was better for us to accept that price for our stock than to go into a legal contest.

Q. And you understood that if you did not do that you would have a legal contest on that question?

A. Well, we took it for granted, naturally, action having been taken determining to retire the preferred stock.

Q. Well, action was not taken to retire the preferred stock until your negotiations had nearly reached a conclusion?

A. Yes, but they had not reached a conclusion.

Q. That is, you waited until the very last moment to see if they would do what you understood they would do?

A. Well, we were very patient.

Q. Then if such action had not been taken you would not have surrendered your stock?

A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor do I think it is exactly a fair question; because the board of directors might have determined (if they had not done it) to have sold our shares for less.

Q. Well, you were acting on behalf of your company largely by yourself at that time, I suppose?

A. Largely.

Q. And your actions were guided by what you have stated?

A. By what I found the surroundings, yes.

Q. When you began buying this stock for your company or companies you did it with the expectation of acquiring control in the Northern Pacific, of course?

A. Or an influential voice in the management.

Q. And you knew that you did in fact have a majority of the combined stock of the Northern Pacific after you got through with your purchases?

A. Certainly.

Q. And would continue to control that company unless they retired your preferred stock?

A. Or unless we sold it.

Q. Of course you knew, during these negotiations, that Mr. Morgan and Mr. Hill and the stockholders of the common stock
296 of the Northern Pacific who were co-operating with them, or allied with them, claimed to control the Northern Pacific by virtue of a majority of the common stock?

A. Naturally.

Q. Did they claim to you during these negotiations that they had such majority of the common stock?

A. I don't remember that they did. That was the general talk. I don't think it was necessary for them to make even the statement.

Q. You knew that, of course?

A. Naturally. It was known by everybody. I think it was not necessary for them to make that statement to me, because among the other statements, as I say, about the retiring of the preferred stock, was a statement made and published in the papers.

Q. And they never disclosed to you for whom they were acting until the transaction was ready to be closed?

A. Do you mean Morgan?

Q. Yes.

A. Do you mean the exact company?

Q. Yes.

A. My recollection is that he did not. In fact, I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid or whether it was the amount of stock to be delivered; I think it was the amount of stock to be

delivered. They supposed we had somewhat more stock than we really had.

Q. When did you have your stock transferred on the books of the Northern Pacific Railway Company in the name of yourself and Mr. Pierce?

A. I don't remember. It must have been sometime before that.

Q. It was prior to the annual meeting in October, wasn't it?

A. I think so, yes.

Q. And you had all your holdings transferred at that time?

A. Practically all. I don't think it was all; I think nearly all was, though. There may have been some of the stock held out; I don't remember.

Q. During these negotiations did the representatives of J. P. Morgan & Company, with whom you dealt, tell you that unless they organized a holding company and this stock was turned
297 over to such holding company, that the transaction would not go through?

A. No, I don't think any such statement was necessary.

Q. Well, was any such statement made?

A. I don't remember that the question ever came up. This was a running negotiation, and it was difficult to tell what either side would do. I think until practically the last minute I didn't know what I would do.

No cross-examination.

(Signed) E. H. HARRIMAN.

Deposition of W. P. Clough.

Testimony of W. P. Clough, taken by and before a special master, in the suit of The State of Minnesota *vs.* Northern Securities Company and others, in the circuit court of the United States for the district of Minnesota, and introduced in evidence by defendants in the suit of The United States *vs.* Northern Securities Company and other-, in the same court.

The defendants offer as evidence in this case the testimony of W. P. Clough, taken in the city of New York in the case of The State of Minnesota *vs.* The Northern Securities Company. Said testimony is received without objection, and is as follows:

"W. P. CLOUGH, being first duly sworn as a witness in behalf of the complainant, testified as follows in answer to interrogatories propounded by Mr. Munn:

Q. The records show that you were present at a meeting of the directors of the Northern Securities Company on the 15th of November, 1901, to which I have already called Mr. Nichols' attention (being the resolution above set forth), where the statement was made

by the president of the Northern Securities Company as to his ability or the possibility of acquiring $37,023,000 of the common stock of the Northern Pacific, and $41,085,000 of the preferred stock. You were present at that meeting?

A. I was, yes, sir.

Q. Was there any discussion at that meeting as to the advisability of this purchase and the terms upon which it was to be made?

A. There was no extended discussion.

Q. Well, will you state what discussion took place?

A. If you will be kind enough to let me take those minutes I will explain just what did occur. (Referring to pamphlet containing minutes of the meeting.) This meeting was an adjourned meeting, held at half-past 2 o'clock on the afternoon of the 15th, which, as I remember, was Friday. A little before the hour for the meeting had arrived (perhaps half an hour or so), one of the partners of J. P. Morgan & Company (my recollection is that it was Mr. Steele) came to the Northern Securities office and said that a negotiation which was pending at that time between J. P. Morgan & Company and Messrs. Harriman and Pierce, for the purchase of their holdings in Northern Pacific preferred and common, he thought would very shortly come to a conclusion as to terms; that is, the precise terms upon which Harriman and Pierce would sell would be arrived at very shortly. And he said, at the same time, that probably before closing the contract, if one were entered into, Harriman and Pierce might, if the stock were turned over to the Northern Securities Company, desire to see some action of the board, and suggested that some kind of action should be taken, and inquired about the meeting. I told him that there was to be a meeting that afternoon, but that likely there could not be another meeting on Saturday (which would be the following day) on account of the fact that a number of our directors did not come to their business on Saturday and that a meeting could not be had until the fore part of the week after that day. Then it was suggested that as that was the case and his bargain might come to an early termination and it might be desired to close it up soon, some sort of action be taken at the meeting to be held that afternoon. And then a sketch was made of a minute entry for the meeting, beginning with the words 'The president stated' and ending with the resolution which closes the first paragraph of the 18th page of this printed volume of the minutes. But as the bargain had not yet been concluded, the figures showing either the amount of the stock or the price to be paid could not then be stated, but he thought they would be ascertained before the close of the meeting. So this preamble, commencing with the words, 'The president stated,' and the resolutions following were prepared just as they are now, with the sums left blank, and the meeting assembled, and, after waiting a little while, no figures were present, and some of the directors being anxious to get away I produced this preamble and resolution and I read the resolution and explained it in a general way to the meeting. And after

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quite a general expression of opinion among the directors who were present, that a purchase of this stock was very desirable the resolutions with the blanks and the preamble were adopted. Then we passed to other business. Just as the meeting was
299 breaking up (the other business being finished) I think Mr. Perkins came in (who was a director). I think Mr. Perkins appeared for the first time near the close of this meeting, after most of the business had been done, and brought in figures showing the amount of preferred and common stock, respectively, that Harriman and Pierce had, and the price to be paid; showing the money and the amount of stock of the Northern Securities Company that was to be paid for it. I looked at it, and it was shown to Mr. Hill, and then it was perceived that the amount of Northern Pacific stock contained in that statement was appreciably less than the amount of stock which we had all the time supposed they owned. And we declined to close the trade; that is, the Securities Company declined to take the stock from Morgan & Company on that basis. The meeting then adjourned, with the whole matter left open. And, as I understood, negotiations were then resumed between Morgan & Company and Harriman and Pierce, and were concluded some time between Friday afternoon and the following Monday morning (which was the 18th). Then a basis was reached, which is expressed by the figures which now appear in this resolution. The preferred and common stock of the Northern Pacific were brought in and paid for, and the minutes were written up with these numbers inserted as they now appear here. The meeting for the purpose of acting upon this project again had been adjourned until the following Tuesday. It was found that the following Tuesday was the first day we could reasonably expect to get a quorum. So the following Tuesday the minutes of the meeting of the previous Friday with the blanks filled as they now stand, were read and approved by the board of directors. That is the history of the resolution.

Q. Now, Col., that is the only official action taken by the Northern Securities Company for the acquisition of this stock?

A. Yes, sir. That is it, precisely.

Q. And no other authorization or ratification was given or made?

A. No, sir, none at all. When the minutes were read at the meeting of the 19th, and approved, with the resolution as it now appears of record, with the numbers filled in, the transaction had been closed; the Harriman and Pierce stocks had been delivered and paid for by the Northern Securities Company the previous day.

Q. There had been no meeting of the directors or executive committee taking any further action regarding this particular
300 transaction, between the meeting of November 15th and the one of November 17th that you refer to?

A. None whatever.

Q. November 18th, I guess it is.

A. 19th.

Q. November 19th?

A. Yes, sir. The board adjourned from Friday afternoon until the following Tuesday afternoon."

Proceedings in the Court of Chancery of the State of New Jersey in the Suit of The Continental Securities Company *vs.* Northern Securities Company.

In the Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

vs.

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Affidavit of Edward T. Nichols.

(Filed May 20, 1904.)

STATE OF NEW YORK, City and County of New York, } ss:

Edward T. Nichols, of full age, came before me this day, and having been first duly sworn, did depose and say,

I am secretary of the defendant, The Northern Securities Company. Annexed hereto are true copies of the bill of complaint, with affidavit and exhibits thereto attached, order to show cause, and opinion of the vice-chancellor, upon the hearing of said order to show cause, in the suit of The Continental Securities Company, complainant, *vs.* The Northern Securities Company, defendant, in the court of chancery, of the State of New Jersey, as appears upon said copies.

EDW. T. NICHOLS.

301 Subscribed and sworn to before me on this 2nd day of May, 1904.

FRANCIS M. KELLER,
[L. S.] Notary Public, N. Y. C.

In Chancery of New Jersey.

Between—

CONTINENTAL SECURITIES COMPANY, Complainant, and NORTHERN SECURITIES COMPANY, Defendant. } On Bill, &c. Order to Show Cause.

Upon reading and filing the bill, affidavit and exhibits herein, and on motion of Bedle, Edwards & Thompson, in behalf of the complainant.

It is on this sixth day of April, nineteen hundred and four, ordered that the defendant The Northern Securities Company show cause before the chancellor at the chancery chambers in Jersey City, on Monday the eighteenth day of April instant, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard therein, why an injunction should not issue pursuant to the prayer of the bill.

And it is further ordered that a copy of this order and the bill and exhibits herein, be served upon the defendant The Northern Securities Company, within three days from the date of this order.

Respectfully advised,

(Signed) W. J. MAGIE, C.

J. J. BERGEN, V. C.

(Copy.)

In Chancery of New Jersey.

To the Honorable William J. Magie, chancellor of the State of New Jersey:

Humbly complaining showeth unto your honor your orator, The Continental Securities Company, a corporation of the State of New Jersey, duly organized under "An act concerning corporations" (revision of 1896) for the purpose of buying and selling, owning
302 and holding, stocks and securities of various other corporations, and while the owner of such stocks and bonds, of exercising all the rights and privileges of ownership thereof:

First. That it is the holder and owner of five hundred shares of the capital stock of the Northern Securities Company, a corporation of the State of New Jersey; that it files this bill in behalf of itself and all other stockholders similarly situated.

Second. That the Northern Securities Company is a corporation of the State of New Jersey, duly organized under the laws of this State on the thirteenth day of November, nineteen hundred and one, with a capital stock of four hundred million dollars, of which it has issued and there is outstanding $395,400,000, consisting of three million nine hundred and fifty-four thousand shares of said stock, of the par value of one hundred dollars each; that the said stock was largely issued to secure ownership of the controlling interest of the stocks of the Northern Pacific Railway Company and the Great Northern Railway Company, the owners of certain lines of railway which extend from the cities of Duluth, Saint Paul and Minneapolis in the State of Minnesota, thence across the continent to Puget sound; that the said Northern Securities Company now holds, one million five hundred and thirty-seven thousand five hundred and ninety-four shares of the capital stock of the Northern Pacific Company, and one million one hundred and eighty-one thousand two hundred and forty-two shares of the capital stock of the Great North-

ern Railway Company, which holdings are about ninety-nine per cent. of all the stock of the Northern Pacific Railway Company, and about ninety-four and one-half per cent. of all the stock of the Great Northern Railway Company.

Third. That on March 10th, 1902, a suit was brought in the United States circuit court for the district of Minnesota, third division, by the United States against the Northern Securities Com-any and others for the purpose of determining whether or not the holding and owning of the said stock of the Northern Pacific Railway Company and the Great Northern Company, by the Northern Securities Company, was not a violation of the act of Congress, known as the anti-trust act of 1890, which declared illegal every contract, combination or conspiracy in restraint of trade or commerce among the several States, or with foreign nations; that such proceedings were taken in said United States circuit court for the district of Minnesota, that answers were filed by all of the defendants, and upon proofs the issue was tried, and exhaustively argued, and thereafter a
303 decree was entered therein in favor of the United States, adjudging that the stock of the Northern Pacific Railway Company and the Great Northern Railway Company, now held by the Northern Securities Company was acquired in pursuance and execution of a plan, combination and conspiracy, in restraint of trade and commerce amongst the several States, such as the anti-trust act denounces as illegal and enjoining the Securities Company from acquiring or attempting to acquire further stock of either of said companies and also enjoining it from voting said stock at any meeting of the stockholders of either of said railroad companies, or exercising or attempting to exercise any control, direction, supervision or influence over the stock of said company or either of them, by virtue of its holding said stock, and enjoining the Northern Pacific and Great Northern Companies respectively, their officers, directors, and agents from permitting said stocks to be voted by the Northern Securities Company or any of its agents or attorneys in its behalf, at any election for officers of either of said company, and likewise enjoining them from paying any dividends to the Securities Company on account of said stock, or permitting or suffering the Securities Company to exercise any control whatsoever over the corporate acts of said companies; but permitting the Securities Company to return and transfer to the *stockholders* of the Union Pacific and Great Northern Companies any and all shares of stock of those companies, which it may have received from such stockholders in exchange for its own stock, and to make such transfer and assignment to such person or persons as are now the holders and owners of its own stock originally issued in exchange for the stock of said companies; and that a copy of said decree or the decretal part thereof, is hereto annexed and marked Exhibit "A."

Your orator further shows that an appeal was taken from the said decree of the said circuit court, to the United States Supreme Court, and that said Supreme Court rendered its decision on the fourteenth

day of March, nineteen hundred and four, affirming the decision of the circuit court, and in the decision then announced affirming said decree, it was directed that the judgment of the Supreme Court of the United States should be "that the decree below be and hereby is affirmed, with liberty to the circuit court to proceed in the execution of its decree as the circumstances may require." That the mandate upon such decision of the Supreme Court has not yet been issued, and under the rules of that court will not issue until the expiration of thirty days from the date of the decision, unless by special order.

304 Fourth. And your orator shows that upon the rendition of the decision by the Supreme Court of the United States affirming the decree of this court, the defendants in that cause, and the Northern Securities Company, determined without waiting for the issue of the mandate of the Supreme Court and without any order of the United States circuit court, for the district of Minnesota, in the execution of its decree, to distribute and divide the stock of the Northern Pacific and Great Northern Railway Companies held by the Northern Securities Company *pro rata* among the stockholders of the Northern Securities Company, according to their holdings of its stock; and not to return and transfer to the original exchanging stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of these railway companies, which the Northern Securities Companies originally received from such stockholders in exchange for its own stock, nor to transfer and assign the stock in either of the railway companies to any such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for such stock of said railway companies respectively.

Fifth. That upon the twenty-second day of March, nineteen hundred and four, James J. Hill, the president, and Edward T. Nichols, of the Northern Securities Company issued a circular to the stockholders of the Northern Securities Company, setting forth the fact of the decision in the United States Supreme Court, and that the directors of the Northern Securities Company had decided, in order to fully and promptly comply with the decree in said suit, to reduce the capital stock of the Northern Securities Company and to distribute to its shareholders the shares of stock of the said railway companies now held by it, and that they had adopted certain resolutions recommending that ninety-nine per cent. of the present outstanding shares of the Northern Securities Company be called in for surrender and cancellation. That the capital stock of the company be reduced from three million nine hundred and fifty-four thousand shares to thirty-nine thousand, five hundred and forty shares and that as against each share of the stock of the Northern Securities Company so to be surrendered there should be delivered thirty-nine dollars and twenty-seven cents of the stock of the Northern Pacific Rail way Company and thirty dollars and seventeen cents of the stock

of the Great Northern Railway Company, and proportionate amounts thereof for fractional shares of the stock of this company so surrendered; that a meeting of the stockholders of the company had
305 been called to be held on Thursday the twenty-first day of April, nineteen hundred and four, at eleven o'clock in the forenoon, at the office of the company No. 51 Newark street, Hoboken, N. J., to vote upon said resolutions, and upon such other business as may be brought before said meeting. The circular further sets forth that the laws of *the* New Jersey require a two-thirds vote of the shareholders to permit the company to reduce its capital stock.

That the circular above referred to also sets forth among other things that the assets of the Northern Securities Company remaining in the treasury after the foregoing distribution is made, will consist of stocks and other property in no way involved in the suit above set forth, valued at an amount in excess of three million nine hundred and fifty-four thousand ($3,954,000.) dollars to which it was proposed to reduce the stock of said company, but that no disclosures whatever were made of the character, nature or kinds of stocks so held, or the extent thereof, or the real value thereof, so that your orator or any other stockholder can in any way determine what was the actual amount or value thereof.

Your orator charges that the plan of distribution of the assets of the company and the reduction of stock does not permit your orator to exercise any judgment as to whether or not it is desirable for it to remain a stockholder of the Northern Securities Company or to hold stock in a corporation owing said stocks, the nature of which is not disclosed; and your orator further charges that it is not within the power of the board of directors or of the stockholders of the corporation, to compel your orator or any one to continue as a stockholder of the Northern Securities Company to any extent whatever, when the said Northern Securities Company no longer owns the stock or controls the corporations for which it was originally incorporated to control.

And your orator says that a distribution upon the basis set forth in the plan proposed by the directors of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company would not redeem and retire the entire amount of the Northern Securities Company stock which was issued in exchange for the stock of the two railway corporations, and that any method which does not retire all of the stock issued in exchange for the stock of said railway company is contrary to the meaning and effect of the decree of the United States court.

Sixth. Your orator shows that it is informed and believes
306 that the resolutions adopted at the said meeting of the directors, were as follows:

Whereas, in the course of its business, this company has acquired, and now holds 1,537,594 shares in the capital stock of the Northern

Pacific Railway Company; and 1,181,243 shares in the capital stock of the Great Northern Railway Company; and

Whereas, in a suit brought by the United States against this company, the said railway companies and others, this company has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been enjoined from paying in this company any dividends upon any of the shares of such railway company, held by this company; and

Whereas, this company has issued, and there are now outstanding 3,954,000 shares of its own capital stock; and

Whereas, this company desires and intends to comply with the decree in the said suit, fully and unreservedly, and without delay;

Resolved, In consideration of the premises, it is declared necessary and desirable for this company so to reduce its present capital stock as will enable it without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railroad companies held by it.

Resolved, That the board of directors of this company hereby declares it advisable that article fourth (4th) of this company's certificate of incorporation be amended, so as to read as follows:

Fourth. The capital stock of this company is hereby reduced to three million nine hundred and fifty-four thousand dollars ($3,954,000) divided into thirty-nine thousand five hundred and forty (39,540) shares of one hundred dollars each ($100). Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this company's stock surrendering to the company, for retirement, ninety-nine per centum (99) of the shares held by him.

Upon the surrender to this company by any shareholder, of the entire number of shares, and parts of shares of this company's stock, which he is hereby required to surrender, this company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof for fractional shares of the stock of this company.

307 The board of directors or executive committee from time to time shall make such rules and regulations as it shall deem necessary or convenient for carrying out the provisions hereof, and all matters pertaining to the surrender and retirement of the stock of this company, or to the assignment and transfer of the stocks of the said railway companies, hereby contemplated, shall be under the direction of the board. For the purposes hereof, the stockholders of this company, and the number of shares held by them respectively, shall be determined from the stock transfer books of the company, which for such determination, shall be closed at a day and hour to be determined by resolution of the board.

Resolved, That a meeting of the stockholders of this company, for

the purpose of taking action upon the said alteration of the certificate of incorporation of this company, and also upon such other business as may come before the meeting, be and is hereby called, to be held, at the general offices of this company in the city of Hoboken, county of Hudson, State of New Jersey, at eleven o'clock a. m., on April 21st, A. D. 1904.

Seventh. Your orator charges that the plan of distribution set forth in said resolutions is contrary to the spirit of the decree of the said United States circuit court which, as your orator is advised, directs, or at most only authorizes the Northern Securities Company to return and transfer to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company respectively, any and all shares of stock in either of said railway companies, which the said Northern Securities Company had heretofore received from such stockholders in exchange for its own stock; that the purpose of said decree was that the stock of the Northern Pacific Railway Company should be returned to such stockholders as had surrendered and exchanged stock of the Northern Pacific Railway Company, and that the stock of the Great Northern Railway Company should be surrendered to such stockholders as had surrendered and exchanged stock of the Great Northern Railway Company.

Eighth. Your orator shows that at the time of the acquirement by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company, the stock of the Northern Securities Company was issued at par, to the stockholders of the Northern Pacific Railway Company at the rate of $115 per share, and that the stock issued in exchange for the stock of the Great Northern Railway Company was issued at par for said Great Northern stock at the rate of $180 per
308 share, and that it is not within the power of the directors of the Northern Securities Company to determine arbitrarily that the distribution of the assets of the Northern Securities Company among its stockholders may be made by giving to each stockholder a proportional distribution of the stock of the two companies held by it.

Ninth. Your orator charges that the said decisions of the said United States courts, and the decree thereunder, setting forth that the defendant corporation comes within the terms of the act to protect trade and commerce against unlawful restraints and monopolies, and was illegal, and that the stock of the said Northern Pacific Railway Company, and the stock of the Great Northern Railway Company was acquired, and is held by virtue of said combination or conspiracy in restraint of trade and commerce among the several States, and that the companies should be enjoined from either attempting to acquire further stock, or to vote the stock which is now held, or to exercise any control over the railway companies, or either of them, and restraining the said railway companies from permitting the stock to be voted by the said defendant, The Northern Securities

Company, and restraining the Northern Securities Company from paying any dividends on account of the stock of either of said railway companies, or permitting the officers of the Northern Securities Company to exercise any control whatever over the corporate acts of the said railway companies, is a determination that the object, intent, purpose and result of the incorporation and organization of the said Northern Securities Company, and its acquisition of the stock of said Northern Pacific Railway Company, and the Great Northern Railway Company, as above stated and set forth, were illegal, *ab initio*, and that the issue of its stock in exchange for the acquirement of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company was illegal and improper, and that therefore the stock of the said defendant, The Northern Securities Company, should be called in and retired, and the stock of the said two railway companies returned to the several persons who assigned the said stocks to the said Northern Securities Company, and received the stock of the Northern Securities Company in exchange thereof, or to the transferees of the stock of the Northern Securities Company so issued and exchanged, since the acquirement of the said stock of the said railway companies by the Northern Securities Company, and that said contracts for exchange being illegal could only be corrected by the return to the several holders of the
309 stock of the Northern Securities Company, the stock of the Northern Pacific Railway Company and the Great Northern Railway Company respectively, for which the said shares of the Northern Securities Company were originally issued.

Tenth. Your orator further charges that while, under the act concerning corporations of the State of New Jersey the power is given to reduce the capital stock of a corporation by the surrender by every shareholder of his shares, and to issue to him in lieu thereof of a decreased number of shares; the said act does not provide for the distribution of the assets of a corporation upon such reduction, nor does it provide for the distribution of a portion of the assets of a corporation and the retention of the balance of the assets, as the property of the corporation, and which assets its stock after being reduced should represent; that the only way in which the decree of the United States court can be effectually carried out is by the return in specie to each stockholder originally holding stock in said railway companies or to any transferee of said stockholder, of the exact number of shares surrendered and for which the stock of the Northern Securities Company was issued; and that such method is the only equitable means of distributing to those, who under the original plan of incorporation, or to their transferees became stockholders of the Northern Securities Company, of all the property contributed by them to form the assets of said corporation.

And your orator further charges that the directors are not authorized to distribute the property of the Northern Securities Company in the arbitrary manner which they have determined upon, but they become trustees to return to the several holders of stock of

the Northern Securities Company, the stock for which stock so surrendered, was originally exchanged. That there is no right or power in said directors to compel any present stockholder of the Northern Securities Company, who originally held stock in the Northern Pacific Railway Company, to accept in exchange for the shares of the Northern Securities Company a smaller number of shares of Northern Pacific Railway Company than originally contributed by him, and also stock of the Great Northern Railway Company, of which he was not an owner, nor *vice versa* is there any power to compel one originally an owner of stock of the Great Northern Railway Company to now accept some shares of stock of the Northern Pacific Railway Company.

310 Your orator further charges that the method of distribution outlined in the said resolutions is only another means, by a *pro rata* distribution among the stockholders of the Northern Securities Company of the shares of the Northern Pacific and the Great Northern Railway Company, of maintaining the illegal position attacked in the said case *of* United States court and to remedy which the said decree was made.

Your orator charges that the distribution as planned and adopted by the board of directors, if consummated, would vest the majority of the stock of both the Great Northern and Northern Pacific Railway Companies, in the same individual stockholders of the said companies, who originally co-operated in the organization of the Northern Securities Company, and who are still co-operating and acting in concert and combination, and who continue the common management and direction of the said two competing railway companies in a manner which would render the decree of the United States court ineffectual, and defeat or evade its true intent and purpose.

Therefore, inasmuch as your orator is without other relief in the premises, your orator prays that the said Northern Securities Company be required to make a full and true answer in the premises, not under oath, (which is hereby expressly waived) and that it may be ordered, adjudged and decreed that the Northern Securities Company return and transfer to its original stockholders, or their transferees, all the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company respectively, upon the same terms under which said stock of the said two companies was acquired by it.

And your orator further prays that in the meantime the said Northern Securities Company, its officers, servants, directors and agents be enjoined and restrained from accepting any stock of the Northern Securities Company and issuing in lieu thereof any stock of the Northern Pacific Railway Company or the Great Northern Railway Company until it shall be determined by this court upon what equitable plan the stock of the Northern Pacific Railway Company and the Great Northern Railway Company should be distributed among its stockholders, and that the said company should be

enjoined from holding the said stockholders' meeting called for the twenty-first of April, until it shall be determined whether or not the plan of distribution set forth in the said resolutions is a correct and true manner of distribution, and that if said plan should not be approved by this court, that then another plan should be made setting forth upon what basis a distribution of said stock should
311 be made, and that your orator may have such other and further relief in the premises as is agreeable to equity and good conscience.

May it please your honor, the premises considered to grant unto your orator not only the State's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Northern Securities Company, restraining them from holding the stockholders' meeting of the Northern Securities Company, on the twenty-first day of April, nineteen hundred and four, to vote upon the resolutions adopted by the board of directors on the twenty-second day of March, nineteen hundred and four, and set forth in said bill or from accepting the surrender of the stock of the Northern Securities Company, and issuing in lieu thereof any stock of the Northern Pacific Railway Company and the Great Northern Railway Company under the plan therein proposed or from taking action in regard to the reduction of the capital stock of the Northern Securities Company, until the further order of this court, but also the State's writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said The Northern Securities Company, commanding it by a certain day and under a certain penalty therein to be expressed, to be and appear before your honor at this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator as in duty bound, will ever pray, &c.

(Signed) BEDLE, EDWARDS & THOMPSON,
Sol. and of Counsel with Compl'ts.

STATE OF NEW JERSEY, } ss:
County of Hudson, }

Clarence H. Venner, being duly sworn according to law on his oath says that he is the president of The Continental Securities Company, the complainant in this cause; that he has read the foregoing bill and the facts therein set forth so far as they relate to the acts of said corporation, are true, and so far as they relate to the acts of others, he believes them to be true.

That the said Continental Securities Company is the holder and owner of five hundred shares of the capital stock of the Northern Securities Company; that he is informed and believes that the statements as to the incorporation of the Northern Securities Company and

of the issue of its stock in exchange for the stock of the Northern
312 *Northern* Pacific Railway Company and the Great Northern Railway Company is correctly set forth in the said bill, and that the said Northern Securities Company now holds one million, five hundred and thirty-seven thousand, five hundred and ninety-four (1,537,594) shares of the capital stock of the Northern Pacific Railway Company, and one million, one hundred and eighty-one thousand, two hundred and forty-two (1,181,242) shares of the stock of the Great Northern Railway Company, which holdings are about ninety-nine (99) per cent. of the issued stock of the Northern Pacific Railway Company, and about ninety-four and one-half (94½) per cent. of all the issued stock of the Great Northern Railway Company.

That deponent has examined the pleadings, opinion and decree of the United States circuit court for the district of Minnesota, in the cause wherein The United States is complainant and The Northern Securities Company and others were defendants, and that the said proceedings are correctly set forth in the said bill.

That deponent is informed and believes that an appeal was taken to the United States Supreme Court, and that a decision was rendered therein on the fourteenth day of March, nineteen hundred and four, affirming the decree below, as in said bill set forth.

Deponent further says that he has in his possession a copy of a circular issued on the twenty-second day of March, nineteen hundred and four, to the stockholders of the Northern Securities Company, signed by James J. Hill, as president, and Edward T. Nichols, as secretary, and setting forth the determination of the directors of the Northern Securities Company to reduce the capital stock of the said company, and to distribute to its shareholders the shares of the stock of the said railway companies now held by it in the rates and at the terms in the bill set forth; that he also received a proxy and power of attorney with a notice of a stockholders' meeting to be held at the company's principal office in Hoboken, New Jersey, which proxy and power of attorney contained a copy of the resolutions of the board of directors of the Northern Securities Company, and which is copied at length in said bill.

That deponent believes that unless restrained by this honorable court the directors will endeavor to secure the adoption of said resolutions by the stockholders at the said stockholders' meeting, and that the distribution of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company, among the stockholders of the Northern Securities Company, is inequi-
313 table and unjust and that the only equitable and fair way of making the distribution of said assets is to return to each contributing stockholder or transferee of contributing stockholder the exact number of shares of stock in the Northern Pacific Railway Company and Great Northern Railway Company, surrendered by them in exchange for the stock of the Northern Securities Company.

Deponent further says that he has no information as to the nature

or character of the balance of the assets of the Northern Securities Company which remain in its treasury after the said distribution is made, and cannot form any estimate as to whether the same is worth the said sum of three million, nine hundred and fifty-four thousand — ($3,954,000), or whether it is worth anything at all.

That deponent believes that his company, as a stockholder of the said Northern Securities Company, is entitled to have returned to it the number of shares of railroad stocks which were transferred to the said Northern Securities Company in exchange for the five hundred shares of stock now held by this company.

Deponent says that he believes that it is inequitable that his company should be required to remain a stockholder of the Northern Securities Company, holding five shares of its capital stock, after the proposed reduction should have been made.

(Signed) C. H. VENNER.

Sworn and subscribed to this 5th day of April, A. D. 1904, before me,

(Signed) RAYMOND DAWSON,
Notary Public of New Jersey.

EXHIBIT A.

United States Circuit Court for the District of Minnesota, Third Division.

UNITED STATES
vs.
NORTHERN SECURITIES COMPANY ET AL. } Decree on Bill, &c.

It was ordered, adjudged and decreed as follows, towit

That the defendants above named have heretofore entered into a combination or conspiracy in restraint of trade and commerce among the several States, such as an act of Congress, approved July 2, 1890, 26 Stat. 209, c. 647 (U. S. Comp. St. 1901, p. 3200)
314 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," denounces as illegal; that all of the stock of the Northern Pacific Railway Company and all of the stock of the Great Northern railway now claimed to be held and owned by the defendant, The Northern Securities Company, was acquired and is now held by it in virtue of such combination or conspiracy in restraint of trade and commerce among the several States; that the Northern Securities Company, its officers, agents, servants and employés be, and they are hereby, enjoined from acquiring or attempting to acquire further stock of either of the aforesaid railway companies; that the Northern Securities Company be enjoined from voting the aforesaid stock which it now holds or may acquire, and from attempting to vote it, at any meeting of the stock-

holders of either of the aforesaid railway companies, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies, or either of them, by virtue of its holding such stock therein; that the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants and agents, be, and they are hereby, respectively and collectively, enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company, or in its behalf, by its attorneys or agents, at any corporate election for directors or officers of either of the aforesaid railway companies, and that they, together with their officers, directors, servants and agents, be likewise enjoined and respectively restrained from paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold; and that the aforesaid railway companies, their officers, directors, servants and agents, be enjoined from permitting or suffering the Northern Securities Company, or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies.

But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said The Northern Securities Company may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern
315 Securities Company from making such transfer and assignments of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed, to have been acquired by it in the aforesaid railway companies.

It is further ordered and adjudged that the United States recover of and from the defendants its costs herein expended, the same to be taxed by the clerk of this court and have execution therefor.

(Signed) HENRY C. CALDWELL,
Presiding Judge.
WALTER H. SANBORN,
AMOS M. THAYER,
Circuit Judges.

Opinion.

In Chancery of New Jersey.

Between—

THE CONTINENTAL SECURITIES COMPANY, Complainant, and THE NORTHERN SECURITIES COMPANY, Defendant. } On Bill for Injunction, 354, and Relief.

Charles E. Thomson, Esq., for the complainant. John W. Griggs, Robert H. McCarter, Charles L. Corbin, and Thomas Thatcher, for the defendant.

On Rule to Show Cause Why an Injunction Should Not Issue.

BERGEN, *V. C.*:

Stated as concisely as the matters under consideration will permit, it appears from the bill of complaint, affidavits and exhibits offered and used, by consent, on the hearing, that the defendant was lawfully incorporated under the laws of this State; that the objects for which it was formed, as set forth in its certificate of incorporation, was the purchase, holding and selling of the bonds, evidences of indebtedness or capital stock of other corporations, whether incorporated in this State or elsewhere, and as owner thereof, to exercise all the rights, powers and privileges of ownership, in-
316 cluding the right to vote on any such stock; that shares of the capital stock of the defendant corporation of the par value of one hundred dollars each, to the extent of 3,954,000 shares were issued and disposed of; that of the stock so issued, a large proportion was used in purchasing a majority of the capital stock of the Northern Pacific Railway Company, and also of the Great Northern Railway Company, by virtue of which the defendant company assumed the management and control of the railway companies; that the defendant company purchased 1,537,594 shares of the common stock, and 410,850 shares of the preferred stock of the Northern Pacific Company, paying therefor in cash $43,625,036.50, and 1,768,229 shares of its own stock; that it purchased of the capital stock of the Great Northern Railway Company 1,181,242 shares, paying therefor $1,707,200 in cash and 2,110,576 shares of its own stock; that the defendant issued and sold of its own stock 75,220 shares to the public for cash; that in January, 1902, the preferred stock of the Northern Pacific Railway Company, held by the defendant, was called for payment, by that company, and paid in cash, for which the defendant received $41,035,000 of which it invested $34,709,062.50 in the convertible bonds of the Northern Pacific Com-

pany, afterward availing itself of the convertible rights vested in the owner of any such bond, the defendant surrendered said bonds to the Northern Pacific Company, and received from it the equivalent in shares of the common stock of said company issued to redeem the bonds. It is thus disclosed that the capital stock of the defendant company was issued in part for the common stock of the two railway companies, which we may assume, for the purposes of this motion was an exchange of stocks with differences paid in cash; that stock of the defendant company worth at par $7,522,000 was sold in the public market for cash; that a large amount of common stock of the Northern Pacific Company now owned by the defendant, was issued by the Northern Pacific Company directly to it, for the surrender of convertible bonds belonging to the defendant company.

It further appeared that a suit brought by the United States against the defendant company, based upon an alleged violation of the act of Congress, commonly known as the "anti trust" act had resulted in a decree, afterward affirmed by the Supreme Court of the United States, adjudging that the defendant had entered into a combination in restraint of trade and commerce among the several States, which the act of Congress denounced as illegal; that
317 all of the stock of the Northern Pacific Railway Company, and all the stock of the Great Northern Railway Company, claimed to be held and owned by the defendant, was acquired and held by virtue of such illegal combination, and upon such adjudication enjoined the Northern Securities Company, or its representatives, from acquiring or attempting to acquire any further stock in either of said railway companies, and prohibiting the defendant from voting, or attempting to vote said stock at any meeting of the stockholders of either of said railway companies, and from exercising, or attempting to exercise any control, direction, supervision or influence whatsoever, over the acts and doings of said railway companies, or either of them, by virtue of its holding any stock therein, or from voting at any corporate election for directors or officers of either of said companies; and said decree further enjoined the said railway companies from paying any dividends to this defendant, on account of any stock which it claimed to hold or own of either of said companies, and prohibiting the said railway companies, from permitting the defendant to exercise any control over their corporate acts. The said decree adjudges that not-ing in it contained, should be construed as prohibiting this defendant from returning and transferring to the stockholders of either of said railway companies, any and all shares of stock in either of said companies, which the Northern Securities Company might have theretofore received from said stockholders, in exchange for its stock, or as prohibiting the defendant from making transfer of the stock to such persons as might then be the holder- of its own stock, originally issued in exchange or payment for stock acquired by it in the aforesaid railway companies.

It further appeared that the continued ownership of said railway

stocks by the defendant company, would not only be useless, but a great disadvantage to the stockholders of the company, and that the directors of the company had decided to reduce its capital stock, and divide the surplus that would arise upon such reduction, between the stockholders, and in order to carry out said determination, on the 22nd day of March, 1904, adopted certain resolutions for that purpose, those pertinent to this issue, being as follows:

"Resolved, In consideration of the premises, it is declared neces-
"sary and desirable for this company so to reduce its present capi-
"tal stock as will enable it without delay, in connection with such
"reduction, to distribute among its shareholders, the shares of capi-
" tal stock of said railroad companies held by it.

318 " *Resolved*, That the board of directors of this company
" hereby declare it advisable that article fourth (4th) of this
"company's certificate of incorporation be amended so as to read
'as follows:

"Fourth. The capital stock of this company is hereby reduced to
"three million nine hundred fifty-four thousand dollars ($3,954,000)
"divided into thirty-nine thousand five hundred and forty (39,540)
"shares of one hundred dollars each ($100). Such reduction of cap-
"ital stock shall be accomplished by each holder of outstanding
"shares of this company's stock, surrendering to the company, for
"retirement, ninety-nine percentum (99) of the shares held by him."

"Upon the surrender to this company by any shareholder of the
"entire number of shares, and parts of shares of this company's
"stock, which he is hereby required to surrender, this company will
"assign to him, for each share so surrendered, thirty-nine dollars
"and twenty-seven cents ($39.27) of the stock of the Northern Pacific
"Railway Company, and thirty dollars and seventeen cents ($30.17)
"of the preferred stock of the Great Northern Railway Company,
"and proportional amounts thereof for fractional shares of the stock
"of this company."

And on the same day the said directors called a special meeting of the shareholders of the defendant company, to vote upon said resolutions, and upon such other business as might be brought before said meeting. That the requirements of the statute, regarding the holding of the special meeting, have been complied with, is not disputed, but the lawful right of the stockholders to approve, and of the directors to carry out the distribution of surplus as proposed, is questioned, and the court is asked to enjoin the stockholders from meeting, and passing upon the resolutions proposed by the directors as aforesaid, and the directors from carrying it out if approved.

The corporation act of this State very clearly and distinctly defines the method to be pursued by a corporation desiring to reduce its capital stock; it is not disputed but that the proceedings taken in the present instance, have followed the statutory directions, so that the asking of the court to enjoin the meeting of the stockholders, is a mere incident to the real question, which is the prohibiting of the directors of this company, from dividing the surplus

in the manner proposed, for if the action of the stockholders
319 at the special meeting, should be the approval of the proposed reduction of capital stock, the result would be, if carried out, the creation of a large surplus of assets. Before the court will allow an injunction order to restrain a corporation from distributing surplus assets, on the prayer of a complaining stockholder, it should be satisfied that the complainant is entitled to the relief he asks on the case presented.

The able and ingenious argument of the complainant's counsel, rested largely upon tho contention that the decree of the Supreme Court of the United States, above recited, not only prevents the distribution of the surplus assets, in the manner proposed, but goes further, and requires that the defendant company shall transfer to the original stockholder, or his transferee, the same stock which was delivered in exchange for the defendant's stock. I am very clear that the decree of the Supreme Court will not bear any such construction; it controls the action of these defendants, only so far as the holding of the stock, and the exercise of such powers as the ownership of stock in a corporation usually confers, may be in violation of the act of Congress with regard to interstate commerce, and that the statement or proviso in the decree that nothing in it contained should interfere with the transfer of the stock to the stockholders of either of the railway companies, any stock which the defendant might have received from stockholders in exchange for its stock, is not a direction that it shall transfer it in any particular method or form, but is added to the decree to avoid the possible construction that the stock could not be returned to the original holders if it was wise or possible to do so. There is no doubt about the character of the original transaction; it was intended to be, and was, a sale of stock to the defendant company, with every *indicia* of ownership and title; the purchaser was not bound to retain one share of the stock, it had the right to sell any or all of it, and invest the proceeds in other securities, and did so in the case of the preferred stock of the Northern Pacific Company; upon such sale and delivery, the stock of the two railway companies became the assets of the defendant company, upon which the value of its stock depended. Large quantities of the capital stock of the defendant have been sold in the open market to purchasers who had a right to rely upon the well known character of the assets of this company, as a protection to their investment, and it would not make the slightest difference, whether the stock in one instance was originally issued for cash, and in another, in exchange for the stock of the two railway companies, the cash and the stock are the common assets of the com-
320 pany, and each stockholder is entitled to the benefit of all of the assets of the corporation, whose stock they hold, and if a division of the surplus is to be made, from securities held as assets, every stockholder is entitled to have his proportionate share of each class, where there is a possible or probable difference in market value.

The complainant also contends that as the purpose for which the stock was acquired, has been adjudged to be unlawful, the transfer and sale of the stock was void *ab initio*, that no title passed, and upon surrender of the stock of the defendant company, the original holder, or his transferee, is entitled to demand and have the identical stock he sold or transferred to the company returned to him. If this insistment of the complainant is sound, he does not show what property he is entitled to have returned, for all that appears to the court at present, his stock may belong to the class that was sold for cash, in which case he would have no ground to complain, for he is getting his equitable portion of the assets of the company, be they worth more or less, but in my judgment, he would not be entitled to the relief he seeks, if he had been able to show that his stock was originally issued to one who had turned over to the defendant company, stock in either of the two railway companies, for if the original stock was issued for an unlawful purpose, the person who paid the consideration, and who accepted the stock, was one of the conspirators, and can hardly ask the aid of a court of equity, to restore to him, property which he contributed to an illegal enterprise—he must abide the consequences of his own act. To permit the originators of an unlawful scheme, or their successors in title, to withdraw from the property of the company, a special class of assets, and leave as security for the unoffending stockholder, such assets as might remain, as a security for his investment, is inequitable. This corporation is not to be dissolved, it holds many valuable securities, other than the stocks of these two railway companies, and expects to continue business, and might, so far as I can see, sell all of these stocks, the holding of which had become unprofitable, and divide the cash among the stockholders, or invest it in other proper securities. It seems to me, that the only question on this branch of the case is, what is the character of the title by which the defendant corporation holds these stocks. I am satisfied from the evidence before me, that the stocks were sold and conveyed without reservation, to the defendant, and that its directors might sell all of one class of stock, and hold the other, and that each stockholder would then have a
321 joint interest in the stock retained, as well as in the cash. If one class of assets had depreciated in value, and the other had increased in worth, during such ownership, would it be seriously contended that a favored class of stockholders could take the valuable assets, and leave the depreciated to satisfy the other stockholders? I think not. Stockholders are, in a sense, partners, and the property of the firm belongs jointly to all. No trust was created when the stocks were transferred, at least, none was announced to the public when the stock was offered for sale, or shown on this hearing, and a secret trust, if now disclosed, would not be sustained, at least, against such stockholders as are not subject to it- protection.

The complainant further argues, that the law under which the defendant was organized, while permitting a reduction of stock does not provide for a distribution of a portion, and the retention o

the balance of the assets as the property of the corporation. The suggestion that a corporation cannot retain a portion of its assets, to represent the capital stock after reduction, is without merit, otherwise every reduction of capital would require a distribution of all the property of the company, and thereby in effect, work a dissolution of the corporation.

By the reduction of the capital stock of a corporation, not impaired by losses, there must necessarily occur a surplus of assets to the extent of the reduction, and unless the rights of creditors will be affected thereby, or the capital impaired, it becomes the duty of the directors to make an equitable distribution of such surplus, or of so much thereof as the carrying on of the business for the best interest of the stockholders, may not require. Strong *vs.* Brooklyn R. R. Co., 93 N. Y. 426. Williams *vs.* Western Union Tel. Co. 93 N. Y. 163. Morawetz on Corporations, 443. The proposed distribution is not a dividend in the sense intended by the statute, but a division of surplus capital rendered useless for the purpose usually attributed to capital, because the issue of stock which it represented has been cancelled.

The right to distribute the surplus having been determined, the question arises, can the directors distribute securities in which such surplus is invested, or must it be reduced to cash? In this case, the character of the assets make an equitable division easy to accomplish, each share of the stock to be assigned to a stockholder in the manner proposed has an equal market value, if there is a difference in value between the two classes, or the value of one is subject to
322 greater fluctuations than the other, each shareholder gets an equal proportion of the fat and the lean, and in view of the possibility that a peremptory sale of this stock, amounting to over three hundred millions of dollars, would be attended with disastrous results to the stockholders of this company, it would seem that the best interests of the shareholders, require that a division of the stock of the two railway companies be made between them, unless prevented by some imperative legal rule; no such rule exists, on the contrary, the power of directors of a corporation to divide property other than money, among the shareholders, is sustained by abundant authority. 9 Amer. & Eng. Enc. of Law. 2 ed. 695; Ehle *vs.* Chittenango Bank, 21 N. Y. 548; Leland *vs.* Hayden, 102 Mass. 542.

Having determined that the stock of the two railway companies constitutes a part of the assets of the defendant company, in which, or in its proceeds, each shareholder has a vested interest to the extent of his holdings of the defendant company's stock; that when the capital stock of a corporation is reduced and a surplus of assets results, it becomes the duty of the directors to divide such surplus as is not required for the use of the company, among the stockholders; that a division of property as distinguished from cash, is lawful; that each shareholder is entitled to his proportionate share of each class of property, so held for distribution, and that the proposed method of division is equitable, it is clear that the complainant has

shown no equity upon which to base its claim for the restraining order of a court of equity. Whether this complainant would be entitled to equitable relief in any phase of the case, is extremely doubtful; I must take the bill of complaint as stating complainant's position correctly, and it is there alleged that notice of the action of the directors on this subject, together with the call for a special meeting for its approval was issued on the 22nd., day of March 1904, and that after that, and on the 28th., day of March following, the complainant went into the market and bought five hundred shares of defendant's capital stock; manifestly he bought such stock with knowledge of the proposed action of the directors and stockholders and thereupon immediately filed his bill of complaint in this cause. But one inference can be properly deduced from his conduct, and that is, that he bought this stock with the fixed purpose of harassing the directors of the company, and its stockholders, and to hinder and delay them in carrying out a proposition for the adjustment of the affairs of the company, made necessary by the
323 restrictive order and decree of the United States court, and to delay the stockholders of the defendant company, (many of whom had nothing to do with the origin of the scheme, afterwards declared unlawful) in the receipt of dividends or income from their investment.

The rule to show cause will be discharged.

(Endorsed:) In chancery of New Jersey, Between The Continental Securities Company, complainant, and The Northern Securities Co. def't. Opinion. Vice Chanceller Bergen, On bill for injunction and relief.

Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE RAILROAD COMPANY, and The Equitable Trust Company of New York, Complainants,

versus

NORTHERN SECURITIES COMPANY and THE NORTHERN PACIFIC RAILWAY COMPANY, Defendants.

Affidavit of E. T. Nichols.

(Filed May 20, 1904.)

CITY AND COUNTY OF NEW YORK, } *ss:*
State of New York, }

I, Frances M. Keller, a notary public in and for the State and county aforesaid, do hereby certify that on the 2nd day of May, A. D., 1904, at said State and county, Edward T. Nichols came

before me in person, and having been by me first duly sworn did depose and say:

I am a resident of Morristown, in the State of New Jersey. Since November fourteenth, 1901, I have continuously been secretary and treasurer of The Northern Securities Company, defendant, and in those capacities have continuously had charge and supervision of its records and accounts.

324 I am acquainted with the evidence taken in the suit of The United States *versus* The Northern Securities Company, Great Northern Railway Company, Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel S. Lamont, and know all the individual defendants in said suit, and all the persons referred to in said case as those consulted about the formation of the Northern Securities Company; they do not exceed ten or twelve persons altogether.

The individual defendants in said suit and all the other holders of stock of the Great Northern Railway Company, or of the Northern Pacific Railway Company, referred to in said evidence as having been consulted about the formation of the Northern Securities Company, now hold altogether nine hundred and ninety-six thousand and sixteen (996,016) shares of the stock of the Northern Securities Company. The ratable distribution proposed by the board of directors of the Northern Securities Company would vest in the said person three hundred eighty-seven thousand two hundred twenty-four (387,224) shares or twenty-four and nine-tenths (24.9) per cent. of the capital stock of the Northern Pacific Railway Company, and two hundred ninety-seven thousand four hundred ninety-three (297,493) shares or twenty-three and eight-tenths (23.8) per cent. of the capital stock of the Great Northern Railway Company, being about one-fourth of the stock of each company. The result of such distribution would vest in the Oregon Short Line Railroad Company, three hundred twenty thousand seven hundred and six (320,706) shares, or twenty and sixty-nine one-hundredths (20.69) per cent. of the capital stock of the Northern Pacific Railway Company and two hundred forty-six thousand three hundred eighty-nine (246,389) shares or nineteen and seventy-one one-hundredths (19.71) per cent. of the capital stock of the Great Northern Railway Company, being about one-fifth of the stock of each company, and would vest in about three thousand persons scattered over the world without any relation to each other, one million two hundred and twenty-nine thousand two hundred ninety-four (1,229,294) shares or seventy-nine and thirty-one one-hundredths (79.31) per cent. of the capital stock of the Northern Pacific Railway Company and nine hundred ninety-four thousand seven hundred three (994,703) shares or seventy-nine and six-tenths (79.6) per cent. of the capital stock of the Great Northern Railway Company, being more than a majority of both companies.

325 First.

The stock of the Northern Securities Company has been issued for the following-named purposes and considerations:

1. For cash at par to the incorporators.
2. In payment for Northern Pacific original common stock.
3. In payment for Northern Pacific preferred stock.
4. In payment for Northern Pacific new common stock.
5. For cash in the open market, the proceeds being used in the purchase for cash of Great Northern stock and other stocks held by the Northern Securities Company.

The Northern Securities Company acquired on the eighteenth day of November, 1901, certificates in the name of E. H. Harriman and Winslow S. Pierce, for thirty-seven million twenty-three thousand dollars ($37,023,000.00) par value common stock and forty-one million eighty-five thousand dollars ($41,085,000.00) par value preferred stock of the Northern Pacific Railway Company, for which it issued to complainants, Harriman and Pierce, certificates for eighty-two million four hundred ninety-one thousand eight hundred seventy-one dollars ($82,491,871) par value of its own stock, and paid eight million nine hundred fifteen thousand six hundred twenty-nine dollars ($8,915,629.00) in cash. The certificates for common stock so received by the Northern Securities Company were by it delivered and surrendered to the Northern Pacific Railway Company, which, in exchange therefor, issued and delivered to the Northern Securities Company certificates in the name of the Northern Securities Company for the same number of shares of Northern Pacific Railway Company's common stock, all of which stock ever since has been and now is held by the Northern Securities Company. On the twenty-seventh day of December, 1901, the Northern Pacific Railway Company having called in all of its preferred stock for redemption and cancellation, the Northern Securities Company presented for redemption thirty-four million seven hundred nine thousand dollars ($34,709,000) par value of the preferred stock so acquired and received therefor thirty-four million seven hundred nine thousand dollars ($34,709,000.00) in cash. Subsequently, the Northern Securities Company subscribed and paid cash at par for thirty-four million seven hundred nine thousand sixty-two and fifty one-hundredths dollars ($34,709,062.50) convertible bonds of the Northern Pacific Railway Company, and thereafter exchanged such bonds for
326 an equal amount in par value of the common stock of said railway company. On January second, 1902, the Northern Securities Company surrendered to the Northern Pacific Railway Company six million three hundred seventy-six thousand dollars ($6,376,000.00) par value of said preferred stock and received payment therefor in cash. On the second day of January, 1902, the outstanding capital stock of the Northern Securities Company was two hundred ninety-seven million four hundred sixty-four thou-

sand nine hundred fifty-one and ninety-four one hundredths dollars ($297,464,951.94) par value. From time to time between the eighteenth day of November, 1901, to shortly before the entry of the decree in said suit the Northern Securities Company acquired from a large number of the owners of stock of the Great Northern Railway Company, acting separately, a large majority of its stock, and prior to the eighth day of March, 1903, the Northern Securities Company acquired from a very large number of separate individual owners thereof eighty-two million twenty-seven thousand three hundred sixty-two and fifty one-hundredths dollars ($82,027,362.50) par value of the common stock and new stock of the Northern Pacific Railway Company.

Second.

From the day on which the Northern Securities Company was organized until the close of business on the 18th of April, 1904, the Northern Securities Company issued the following certificates for its capital stock:

Nos. A 1 to A 881 inclusive, in various denominations exceeding 100 shares each.

Nos. B 1 to B 6673 inclusive, in various denominations from 1 share to 99 shares each.

Nos. C 1 to C 41085 inclusive, all of the denomination of 10 shares each.

Nos. 1 to 38306 inclusive, all of the denomination of 100 shares each.

In the aggregate, 86,945 certificates of said stock have been issued, a very large majority of which are now outstanding. During the same period approximately 16,000 transfers of said stock have been registered upon the books of the company. The Northern Securities Company has made purchases, as one transaction, from the same persons, of both Northern Pacific and Great Northern stocks in varying amounts and has issued and delivered in payment therefor certificates of its own stock aggregating such purchase price but
327 in no way specifically related to the purchase price of either one or the other of said railway stocks. Such certificates have been split up into smaller denominations, transferred to other holders and again repeatedly transferred and retransferred on the books of the company. Many of the transfers made on the books of the company are complicated, some showing the splitting up of large certificates and the transfer of parts or all thereof to several new separate holders; others showing the transfer from several separate owners to one new holder and the consolidation of the amount of stock represented by such transfers into one or more certificates of larger denomination.

There are many transfers that are collective, as where one person brings in a number of certificates standing in different names to be transferred to one holder. In conformity with the custom and practice of stock transfer offices in such cases, the certificates to be trans-

ferred were delivered to the transfer agent and the same have been entered on th- debit side of the transfer books and the new certificates issued against the whole amount of stock so cancelled have been entered on the credit side in one group. The order in which the entry is made on the debit side is determined by the clerk who makes the entry. The determination of such order is purely accidental; it is therefore manifest that no single certificate of the group of certificates collectively issued on such a transfer can be positively asserted to have been issued against any specific one of the certificates cancelled in that transfer. Whenever the stock represented by a certificate has passed through collective transfers, it cannot be traced back to any original issue without making arbitrary assumptions.

To illustrate this I took, without previously knowing its history, the last certificate of stock issued, viz: certificate B 6673, issued April 18th, 1904, for 50 shares. The certificate cancelled against the issue of certificate B 6673 was B 6645, issued for 50 shares April 14th, 1904.

The certificate cancelled against the issue of certificate B 6645 was certificate B 6117 issued December 14th, 1903, for 50 shares. Certificate B 6117 was one of four certificates, Nos. B 6116 / B 6119, each for 50 shares, the aggregate issue being 200 shares. These four certificates were collectively issued against the cancellation of certificates 36117 and 36116, each for 100 shares and aggregating 200 shares. Certificate No. B 6117 may have had its origin in either certificate No. 36117 for 100 shares or in certificate No. 36116
328 for 100 shares. Arbitrarily *assuming* that it had its origin in certificate No. 36116, I have traced that certificate back and find that it was issued on December 12th, 1903. On that date certificate- Nos. 36116 and 36117, each for 100 shares and aggregating 200 shares, were issued against the cancellation of certificates 19993 for 100 shares, B 2328 for 5 shares and B 2319 for 95 shares, the three certificates aggregating 200 shares.

Assuming again that certificate 36116 for 100 shares had its origin in certificate 19993 for 100 shares, I have traced the history of certificate No. 19993. Certificate No. 19993 was issued March 6th, 1902, against the cancellation of certificate No. 8519 for 100 shares. Certificate 8519 for 100 shares was issued January 14th, 1902, being one of the following certificates, viz; Nos. 8415 / 8680, both inclusive, for 100 shares each, aggregating 26,600 shares and B 1132 for 56 shares, the whole aggregating 26656 shares. All of these certificates were issued January 14th, 1902, against the cancellation of certificate A 499 for 26656 shares. Certificate A 499 was issued January 9th, 1902, being one of the following group of certificates issued on that date, viz; A 499 for 26656 shares and Nos. 7377 / 7476, inclusive, each for 100 shares, the whole aggregating 36656 shares. These certificates were all issued January 9th, 1902, against the cancellation of certificate A 437 for 36656 shares.

Certificate A 437 was issued December 31st, 1901, in payment for

31,875 shares of Northern Pacific stock at the price of 115 per cent. That purchase cost the Northern Securities Company 36656-25/100 shares of its own stock, a scrip certificate being issued for the 25/100 of a share over and above the even amount of 36656 shares.

I have, in this manner and by this process of arbitrary selection, traced certificate B 6673 for 50 shares to an origin in Northern Pacific stock.

Having in the above process traced certificate B 6673 to an origin in certificate B 6117, and then assumed that certificate B 6117 had its origin in certificate 36116, I now assume, in order to show that it may with equal correctness be traced to a different source, that it had its origin in certificate No. 36117.

I have shown above that certificates 36117 and 36116 were collectively issued against the cancelled certificates 19993 for 100 shares, B 2328 for 5 shares and B 2319 for 95 shares. Certificate No. 19993 having been assumed, as above shown, to be the origin of certificate 36116, certificate No. 19993 is necessarily eliminated from
329 further consideration and I have, therefore, *assumed again* that the origin of certificate 36117 is in certificates B 2328 for 5 shares and B 2319 for 95 shares.

I have traced both these last named certificates. Certificate B 2319 for 95 shares was issued March 10th, 1902, as an original issue in part payment for 53 shares of Great Northern stock.

Certificate B 2328 for 5 shares was issued March 10th, 1902, against the cancellation of certificate B 2292 for 5 shares.

Certificate B 2292 for 5 shares was issued March 4th, 1902, together with other certificates,, against the cancellation of certificate No. B 280 for 50 shares.

Certificate No. B 280 for 50 shares was issued December 11th, 1901, in part payment for a purchase of Northern Pacific stock.

This last process of tracing, leads to the conclusion that certificate B 6673 for 50 shares had its origin, as to 95 per cent. of said 50 shares, in a purchase of Great Northern stock and as to 5 per cent. of said 50 shares in a purchase of Northern Pacific stock.

There have been issued and are now outstanding certificates of stock or of stock scrip convertible into stock, for $395,400,000 of the capital stock of the Northern Securities Company, which certificates (besides $45,332,236.50 in cash) were issued and paid as follows: namely, 1,768,229 shares (and $43,625,036.50 in cash) for 1,537,594 shares (each of the par value of $100) of the common stock, and 410,850 shares of the preferred stock of the Northern Pacific Railway Company; 2,110,576 shares (and $1,707,200 in cash) for 1,181,242 shares (each of the par value of $100) of the capital stock of the Great Northern Railway Company; 75,220 shares to the public for cash which was used by the Northern Securities Company for the purchase of other property, and for corporate purposes.

A very large number of the shareholders of the Northern Securities Company reside abroad, in Great Britain, France and other

parts of Europe. At the closing of the transfer books of the company, on the 18th of April, 1904, there were 3,953,971 shares of stock of the company, of $100 each, outstanding in the hands of 2,531 separate holders. The balance of the $395,400,000 of stock of the company, namely $2,900 was outstanding in stock scrip certificates convertible into stock certificates when presented in sums of $100, or multiples thereof.

Third.

I attended the meeting of the stockholders of the Northern Securities Company held on the 21st of April, 1904, and acted
330 as secretary of said meeting. There were present at said meeting in person or by proxy, one thousand eight hundred twenty-nine (1,829) stockholders of the company, or about seventy-two and seventy-five one-hundredths (72.75) per cent. of the total number of stockholders of the company, and holding two million nine hundred forty-four thousand seven hundred forty (2,944,740) shares of the stock of the company, being about seventy-four and one-half (74½) per cent. of its total outstanding stock. Excluding the eight hundred twenty-four thousand nine hundred eighteen (824,918) shares of the stock of the company held by the complainants Harriman and Pierce (which is about twenty and eighty-nine one-hundredths (20.89) per cent. of the total stock of the company), there were absent from said meeting holders of something less than five (5) per cent. of the total stock of the company. All of the two million nine hundred forty-four thousand seven hundred forty (2,944,740) shares present at the meeting voted in favor of the distribution of the railway stocks owned by the company, in accordance with the plan proposed in the circular issued by the company to its stockholders March twenty-second, 1904.

I have received since said meeting of the stockholders, but too late to be used, proxies, intended to be voted at that meeting in favor of the distribution aforesaid, covering more than seventeen thousand (17,000) additional shares of stock of the Northern Securities Company.

Fourth.

The transfer books and stock ledger used by the Northern Securities Company are of approved and modern form and contain all customary provisions for recording the details of stock transfers. These books have been carefully and accurately kept.

I have read the affidavit of Alexander Millar attached to the bill of complaint in this action. What is said in the second section of that affidavit as to the stock books, stock ledgers, books of account and records customarily kept by large corporations, is true, and it is also true that it is customary, and in accordance with the requirements of the New York stock exchange, for such corporations to appoint registrars of transfers.

The registry of transfers kept by such registrars is not, however, a duplicate record of actual stock transfers. It does not show the issuance of any specific new certificate against any particular certificate cancelled. It does show the number and denomina-
331 tions of every certificate issued, the date of cancellation of certificates and the numbers of certificates outstanding, together with the aggregate amount of stock represented thereby, but its principal purpose is to limit the issuance of stock to the amount thereof authorized and to prevent over-issues.

It is not feasible, as stated in the fourth section of that affidavit, to trace every outstanding certificate of stock back to its original source, but, on the other hand, it is true that very many steps in such tracing wouldbe uncertain; would be determined by accident or arbitrary assumption and would lead to no conclusion that could be positively affirmed to be correct. And this is particularly true where the original issue of stock has been made for two or more different considerations, as has been the case, as heretofore stated, in the issuance of the stock of the Northern Securities Company.

EDW. T. NICHOLS.

Subscribed and sworn to before me, this 2nd day of May, 1904.

[L. S.] FRANCES M. KELLER, Notary.

Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

vs.

NORTHERN SECURITIES COMPANY, Defendants.

Affidavit of James J. Hill.

STATE OF NEW YORK, City and County of New York, } *ss:*

I, Frances M. Keller, a notary public in and for the State and county aforesaid, do hereby certify that on the 28 day of
332 April, A. D. 1904, in said State and county, James J. Hill came before me in person, and having been by me first duly sworn did depose and say:

I am the president of the Northern Securities Company and have been since its organization. That on the eighteenth day of November, 1901, the Northern Securities Company acquired certificates in the name of E. H. Harriman and Winslow S. Pierce for thirty-seven million twenty-three thousand dollars ($37,023,000.00) par value common stock and forty-one million eighty-five thousand dollars

($41,085,000.00) par value preferred stock of the Northern Pacific Railway Company. That the terms under which the Northern Securities Company acquired such certificates are in a resolution adopted by the board of directors of the Northern Securities Company, of which the following is a copy.

"*Resolved*, That the president be, and hereby is 'authorized in behalf of this company, to purchase said stock—namely, $37,023,000.00 'par value of the common stock, and $41,085,000.00 par value of 'the preferred stock of the Northern Pacific Railway Company, at 'an aggregate price of $91,407,500.00, payable as to $82,491,971.00 'thereof in the fully paid-up and non-assessable shares of the 'capital stock of this company at par, and as to $8,915,629.00 in 'cash; and that the officers of this company be, and hereby they 'are, authorized to issue fully paid-up and non-assessable shares of 'stock of this company to the amount of $82,491,871.00, and to pay '$8,915,629.00 in cash, in consideration of such $37,023,000.00 of the 'common stock and $41,085,000.00 of the preferred stock of the 'Northern Pacific Railway Company.

"*Resolved*, That the President be, and hereby he is, 'authorized 'at any time to retire at par, for cash, any and all preferred stock 'of the Northern Pacific Railway Company that may be acquired 'by this company, and in case such retirement shall be effected prior 'to January 1, 1902, to allow interest up to January 1, 1902, at the 'rate of four per cent. per annum on the snm receivable for such 'preferred stock.

'*Resolved*, That the president be, and hereby he is, 'authorized in 'behalf of this company to purchase at their par value an amount 'of the convertible certificates of the Northern Pacific Rail-
333 'way Company to be issued pursuant to the resolutions of the 'board of directors of the Northern Pacific Railway Company 'passed November 13, 1901, equal to seventy-five eightieths of the 'par amount of any and all common stock of the Northern Pacific 'Railway Company that shall have been acquired by this com-'pany.

'*Resolved*, That the president be and hereby he is, authorized, in 'case of the purchase by this company of any of the convertible 'certificates of the Northern Pacific Railway Company, to convert 'the same into common stock of the Northern Pacific Railway Com-'pany whenever such conversion may be effected.

'*Resolved*, That the president be, and hereby he is, authorized to 'borrow, on such terms as he may arrange, any moneys required 'for the purpose of carrying out the foregoing resolutions, and to 'make all financial arrangements, and to do all acts and things, 'which he may deem needful in the premises.'"

No other or different contract, agreement, or understanding, relating to the acquisition of such shares by the Northern Securities Company, than as expressed in such resolution, was ever made or authorized by said company.

JAS. J. HILL.

Subscribed and sworn to before me this 28 day of April, 1904.

FRANCES M. KELLER,
[NOTARIAL SEAL.] Notary, N. Y. County.

334 Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, Oregon Short Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
against
NORTHERN SECURITIES COMPANY and THE NORTHERN Pacific Railway Company, Defendants.
} In Equity.

Affidavit of George C. Clark.

(Filed May 20, 1904.)

STATE OF NEW YORK,
City and County of New York, } ss.:

I, Francis M. Keller, a notary public in and for the State and county aforesaid, do hereby certify that on the 2nd day of May, A. D. 1904, in said State and county, George C. Clark came before me in person and having been my me first duly sworn did depose and say:

I have been engaged in the business of banking and brokerage in the city of New York for forty years, and have been for several years a member of the firm of Clark, Dodge & Company. In November, 1901, the members of the firm held for their own account and for the account of their customers large amounts of the stock of the Great Northern Railway Company and the Northern Pacific Railway Company. Since November, 1901, the firm, acting for its members and for customers and upon their instruction, has made sales to the Northern Securities Company of the stock of the said railway companies on the basis of one hundred and fifteen dollars ($115) for Northern Pacific and one hundred and eighty dollars ($180) for Great Northern, receiving in payment therefor shares of the capital stock of the Northern Securities Company at par. All such sales were made in the usual course of business, in good faith, and in the belief that each share of the capital stock of the Northern Securities Company received in payment represented a ratable interest with all other shares in all the assets of the company.

335 The certificates of capital stock of the Northern Securities Company received by the firm in payment for railway shares sold were alike in form, and in no way indicated for what consideration they were issued. The certificates of the Northern Securities Company were, when received, held by the firm for account of its customers and members of the firm. During the time certificates

of the Northern Securities Company so acquired by purchase and delivery to it of railway shares were so held, the firm executed orders for the purchase and sale of Northern Securities Company stock in the market in the usual course of business.

In accordance with the custom and practice of bankers and brokers, the firm, in making sales of the stock of the Northern Securities Company, delivered stock certificates held by it indiscriminately, taking no account of whether they were acquired by purchase in the market or on account of sale and transfer of railway shares made by the firm for its members or customers. When the firm was called upon by its customers to make delivery to them of Northern Securities stock, such delivery was in every instance made without regard to whether the stock delivered was acquired in the market or in exchange for railway shares in the execution of orders for their sale.

Since November, 1901, large amounts of the stock of the Northern Securities Company have been bought and sold in the public markets in New York and elsewhere, and numerous transfers of ownership of such shares *has* been made by delivery from one holder to another without any record of the sale on the books of the Northern Securities Company. The result of the transactions of the firm in Northern Securities Company's stock is that the firm now has in its possession certificates for such stock to the amount of many thousand shares, and is unable to determine whether said certificates were issued by the Northern Securities Company for railway shares sold to it or for other considerations.

GEORGE C. CLARK.

Subscribed and sworn to before me this 2nd day of May, 1904.

FRANCES M. KELLER,
[L. S.] Notary Public, N. Y. C.

336 Circuit Court of the United States, District of New Jersey

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company, Complainants,

against

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Affidavit of F. B. Blinn.

(Filed May 20, 1904.)

STATE OF NEW YORK, City and County of New York, } *ss:*

I, Frances M. Keller, a notary public in and for the State and county aforesaid, do hereby certify that on the 2nd day of May,

A. D. 1904, F. B. Blinn came before me in person, and having been by me first duly sworn, did depose and say:

I am a resident of Brooklyn, in the State of New York; I have been engaged in business in the city of New York for five years, and am familiar with the methods used by large corporations in transferring their stocks, and with the most modern and approved forms and books used for such purposes.

Since April 1, 1901, I have been the assistant secretary of the Hudson Trust Company, of Hoboken, New Jersey, and have been in charge of the stock transfer department of that company located at 71 Broadway, New York.

The Hudson Trust Company is the transfer agent for the stocks of the United States Steel Corporation.

I have examined the stock transfer books for the Northern Securities Company, and find that they are modern, adequate and substantially the same in form as those in use by other large corporations, and that entries thereon are made in the same manner.

I have read the affidavit of Edward T. Nichols in this case, and concur in his statement that it would not be feasible to accurately trace back any one of a very large proportion of the certificates of stock of the Northern Securities Company now outstanding,
337 to its original source, and thereby ascertain positively whether the same was issued for cash or for property of one kind or another, for the reason that what may be termed collective transfers, which are customary forms of entry on all stock transfer books, and which frequently appear upon the transfer books of the Northern Securities Company, preclude any but a purely arbitrary connection between any particular certificate cancelled and any particular certificate issued in such a transfer.

No certificate could be traced back through such transfers to a source that could be asserted with any confidence to be the true source of such particular certificate.

F. B. BLINN.

Sworn to before me this 2nd day of May, A. D. 1904.

FRANCES M. KELLER,
[L. S.] Notary Public.

Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON Short Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
against
NORTHERN SECURITIES COMPANY and NORTHERN Pacific Railway Company, Defendants.
} In Equity.

Affidavit of Grant B. Schley.

(Filed May 20, 1904.)

STATE OF NEW YORK,
City and County of New York, } *ss:*

I, Frances M. Keller, a notary public in and for the State and county aforesaid, do hereby certify that on the 2nd day of May, A. D. 1904, in said State and county, Grant B. Schley came before me in person and having been by me first duly sworn did depose and say:

I have been engaged in the business of banking and
338 brokerage in the city of New York for many years, and for several years have been a member of the firm of Moore & Schley.

Since the organization of the Northern Securities Company, the firm, acting for its members and for customers, has made sales to the Northern Securities Company of large amounts of the stocks of the Great Northern and Northern Pacific Railway Companies on the basis of one hundred and fifteen dollars ($115) for Northern Pacific and one hundred and eighty dollars ($180) for Great Northern, receiving in payment therefor shares of the capital stock of the Northern Securities Company at par. All such sales were made in the usual course of business, in good faith, and in the belief that all shares of both railway companies formed common corporate assets, and that each share of the capital stock of the Northern Securities Company received in payment represented a ratable interest, with all other shares, in all the assets of the company.

The certificates of capital stock of the Northern Securities Company received by the firm in payment for railway shares so sold were alike in form, and in no way indicated for what consideration they were issued. Deponent's firm has bought and sold, for itself and for its customers, large amounts of the stock of the Northern Securities Company, represented by certificates in the names of numerous other persons and firms. In accordance with the custom and practice of bankers and brokers, the firm, in making sales of said stock of customers, delivered stock certificates held by it indiscriminately, taking no account of whether they had been acquired

by purchase in the market, or on account of sale and transfer of railway shares made by the firm for its members or customers, or of the names in which they were issued.

Since November, 1901, large amounts of the stock of the Northern Securities Company have been bought and sold in the public markets in New York and elsewhere, and it has been common usage to make transfer of ownership of such shares from seller to buyer by delivery of the stock certificates, without any record of the transfer being made on the books of the Northern Securities Company.

GRANT B. SCHLEY.

Subscribed and sworn to before me this 2nd day of May, 1904.

[L. S.] FRANCES M. KELLER,
Notary Public, N. Y. Co.

339 Affidavit of B. G. Mitchell.

(Filed May 20, 1904.)

STATE OF NEW YORK,
City and County of New York, } ss:

I, Frances M. Keller, a notary public in and for the State and county aforesaid, do hereby certify that on the 2nd day of May, A. D. 1904, B. G. Mitchell came before me in person, and having been by me first duly sworn did depose and say:

I am a resident of the city of New York. I have been engaged in business in said city for more than thirty-five years, and I am thoroughly familiar with the most modern and approved practice adopted by large corporations for the transfer of their stocks.

I have been since 1885 an officer of the Central Trust Company of New York, and am at this time the third vice-president of that company, and as such officer I have charge of the department of that company devoted to the transfer or registration of corporation stocks.

The Central Trust Company of New York acts as transfer agent or as registrar of transfers of a large number of different corporations. The duties of a transfer agent and of a registrar are entirely dissimilar, each performing duties that the other does not, and the transfer books and the registry of transfers are dissimilar and serve entirely different purposes.

I am informed and verily believe that the Northern Securities Company has issued a part of its capital stock for cash, part in payment for stocks of the Northern Pacific Railway Company and part in payment for stock of the Great Northern Railway Company, and that said capital stock of the Northern Securities Company so issued for different purposes and for divers considerations is now outstand-

ing in the hands of a large number of different holders and that a very large proportion of said stock has been repeatedly transferred and retransferred upon the books of the company

I have examined the stock transfer books of the Northern Securities Company and have found that they are modern in form and provide all the facilities for accurately recording the details of transfers. I am of the opinion that it would be practically impossible to trace back any one of the large proportion of the certificates of stock of the Northern Securities Company now outstanding and
340 thereby ascertain whether its origin was in a purchase of Northern Pacific stock, in a purchase of Great Northern stock, or whether it was issued for cash or other consideration.

By the nature of many transfers appearing upon said books such process of tracing would necessarily be by arbitrary selection, and would be in many of its steps uncertain and would lead to endless confusion.

B. G. MITCHELL.

Sworn to before me this 2nd day of May, 1904.

[L. S.] FRANCES M. KELLER,
Notary Public, N. Y. Co.

Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

versus

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC Railway Company, Defendants.

Affidavit of Edward T. Nichols and Nicholas Terhune.

(Filed May 20, 1904.)

UNITED STATES OF AMERICA, State, County, and City of New York, } *ss.:*

Edward T. Nichols and Nicholas Terhune being duly sworn depose and say:

Said Nicholas Terhune is one of the transfer agents of the Northern Securities Company.

That they have read the affidavit of Otto C. Kahn submitted on behalf of complainants in this suit.

That so far from collective transfers of Northern Securities Company stock being of such infrequent occurrence as to be a matter of little significance when compared with the great mass of transfers

of stock, it is a fact that they are a very frequent, practically
341 a daily occurrence, and are found on substantially every page of the transfer-books and cover a very large percentage of the aggregate amount of stock transferred.

Mr. James J. Hill's account is not the only instance in which both Great Northern and Northern Pacific stocks have been received from a single vendor as part of one transaction. Several such transactions are recorded on the books of original entry mentioned in Mr. Kahn's affidavit.

Over six hundred eighty-five thousand (685,000) shares of stock of the Northern Securities Company have been issued in payment for such purchases in over twenty (20) different names, and in a large number of different certificates, a large proportion of which have been split up and transferred into other names.

EDWARD T. NICHOLS.
NICHOLAS TERHUNE.

Subscribed and sworn to before me this 19th day of May, 1904.

MARY AGNES CARTWRIGHT,
[L. S.] Notary Public, Kings Co., 135.

Cert. filed in N. Y. Co.

Circuit Court of the United States for the District of New Jersey.
In Equity.

EDWARD H. HARRIMAN and Others, Complainants,
vs.
THE NORTHERN SECURITIES COMPANY and NORTHERN Pacific Railway Company, Defendants. } May, 1904.

Affidavit of Edward T. Nichols.

(Filed May 20, 1904.)

CITY AND COUNTY OF NEW YORK, *ss:*

Edward T. Nichols, being duly sworn, deposes and says as follows, viz:

Up to the 22d day of March, 1904, neither Edward H. Harriman,
342 nor his associate Winslow S. Pierce, nor the Oregon Short Line Rail Road Company, (of which at all times the said Harriman was and now is president,) ever in any way or manner questioned or disaffirmed either the original transaction of November 18, 1901, or any subsequent action of the Northern Securities Company, but acquiesced in the issue of more than 85,000 certificates of stock to more than 3,100 stockholders of said company, residing in and being citizens and subjects of many States

and foreign countries, who in payment for stock of said company delivered to it their property and money to the amount of hundreds of millions of dollars upon their faith in its ownership of the said stock and property to it sold and delivered as aforesaid by Harriman and Pierce; and the said Harriman and Pierce or their *cestui que trust* the Oregon Short Line Rail Road Company, regularly received and have continued to receive, and to appropriate to their use without interruption, upon $82,491,800 Northern Securities stock quarterly dividends to the amount of millions of dollars, derived to a large extent from property and money so sold or delivered to the Northern Securities Company in good faith by such other stockholders. Since the acquisition of said stocks from Harriman and Pierce and others, more than 15,000 transfers of the stock of the Northern Securities Company have taken place on the books of said company, which transfers were made to innocent purchasers in good faith relying upon the validity of the acquisition of said stocks by the Northern Securities Company.

Substantially all of the capital stock of the Oregon Short Line Rail Road Company is owned by the Union Pacific Railway Company, which two companies in turn own substantially all of the stock of the Oregon Rail Road and Navigation Company, of all of which three railroad companies the said Edward H. Harriman is president; and one or another of the railroads of said three companies is strongly competitive with the railroad of the Northern Pacific Railway Company or the railroad of the Chicago, Burlington and Quincy Rail Road Company of whose capital stock, substantially one-half is owned by the Northern Pacific Railway Company; the line of all of said railroads being accurately shown upon the map Exhibit 13 opposite page 662 of volume one of the record in the suit of the United States against Northern Securities Company and others to which map reference hereby is made. The granting of the relief prayed for by the complainants in that suit, as I am advised by counsel and therefore aver would result in vesting in said three competing railroad companies such an amount of the stock of the Northern Pacific Railway Company as necessarily would give to them the control of the competing railroads of the Northern Pacific Railway Company and the Chicago, Burlington & Quincy Rail Road Company, and such common control would be in violation of the constitution and statutes of Nebraska and of other States in which such railroads are situated.

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EDW'D T. NICHOLS.

Subscribed and sworn to before me in the city of New York this third day of May, 1904.

WM. H. BRUDER,
[L. S.] Notary Public, New York County.

345 Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
vs.
NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC Railway Company, Defendants.

Verified Minutes Northern Pacific Railway Company, Northern Securities Company.

April, 1904.

John W. Griggs, sol'r of def'ts.

Filed May 20, 1904.
S. D. OLIPHANT, Clerk.

346 Circuit Court of the United States for the District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
vs.
THE NORTHERN SECURITIES COMPANY, Defendant.

STATE OF NEW YORK, }
City and County of New York, } ss:

George H. Earl, being duly sworn, deposes and says:

I am secretary of The Northern Pacific Railway Company, one of the defendants in this suit, and have been secretary of said company continuously from November, 1901. During that time I have regularly attended the meetings of the board of directors, and of the executive committee of said company, and have kept and have entered accurate minutes of the proceedings of all such meetings in books belonging to the company, which during all such period have been and now are in my custody in the office of the company in the city of New York. I have made a true copy of all such minutes from November 13, 1901, as relate to the retirement of the preferred stock and the issue of common stock, and have annexed the same hereto as part of my deposition. All action therein recorded was taken as therein stated, and by the affirmative vote of every director therein recorded as having been present at the meet-

ing at which such action was taken, and in every instance every director so recorded as present at any meeting was so present, and voted in favor of every resolution in said minutes recorded as having been adopted at such meeting.

GEO. H. EARL.

Subscribed and sworn to before me, in the city of New York, this 2d day of May, 1904.

[SEAL.] FRANCES M. KELLER,
Notary Public, N. Y. Co.

347 Northern Pacific Railway Company.

Directors' Eighty-third Meeting.

NOVEMBER 13, 1901.

At a meeting of the board of directors held pursuant to due notice at the office of the company, No. 49 Wall street, New York city, on Wednesday, November 13, 1901, at 2 o'clock p. m., there were present the following newly elected directors (constituting a quorum), viz.:

Messrs. Baker,
Harriman,
Hill,
Ives,
James,
Kennedy,
Lamont,
Mellen,
Rea,
Rockefeller,
Steele,
Stillman,
Thomas,
Twombly.

On motion, Mr. Ives was chosen to act as chairman. He thereupon took the chair and announced the meeting ready for organization.

The secretary then submitted the report of the inspectors of election, showing that at the annual meeting of stockholders held on October 1, 1901, the following were elected directors for the ensuing year, to wit:

Robert Bacon,
George F. Baker,
Edward H. Harriman,
James J. Hill,
Brayton Ives,
D. Willis James,

John S. Kennedy,
Daniel S. Lamont,
Charles S. Mellen,
Samuel Rea,
William Rockefeller,
348 Charles Steele,
James Stillman,
Eben B. Thomas,
Hamilton McK. Twombly.

The directors then proceeded to the election of officers.

On motion, it was

Resolved, That the secretary be, and hereby he is, directed to cast a ballot in favor of the election of the following named persons to serve as officers of this company for the ensuing year, to wit:

For president.....Charles S. Mellen,
For vice-president.. .....Daniel S. Lamont,
For comptroller.....Henry A. Gray,
For treasurer.....Charles A. Clark,
For secretary and assistant treasurer .....George H. Earl,
For assistant secretary .....Richard H. Relf,
For general counsel in New York .....Francis Lynde Stetson,
For general counsel in St. Paul ....Charles W. Bunn.

The secretary cast the ballot as directed and the chairman announced that the above named persons were duly elected to the offices set opposite their names respectively.

Mr. Ives then resigned the chair in favor of Mr. Mellen.

The resignation of Mr. Robert Bacon as a director of this company was presented, and, on motion, the same was accepted.

Mr. Samuel Spencer was nominated as a director to fill the vacancy caused by the resignation of Mr. Bacon, and on motion, the secretary was directed to cast a ballot in favor of the election of Mr. Spencer. This was done and the chairman announced that Mr. Samuel Spencer had been duly elected a director of this company to fill the existing vacancy.

On motion of Mr. Steele, it was

Resolved, That the following directors be and hereby they are appointed as the executive committee of this company, viz.: Messrs. Baker, Harriman, Hill, Kennedy, Spencer and the president, or in his absence the vice-president, *ex-officio*.

The following preamble and resolutions, offered by Mr. Kennedy and seconded by Mr. Baker, were unanimously adopted:

Whereas, under and pursuant to an agreement dated July 13, 1896, the Northern Pacific Railway Company did acquire from
Messrs. J. P. Morgan & Co. a copartnership in the city of
349 New York (in said agreement called the reorganization managers), certain stocks, bonds and other property representing the system formerly of the Northern Pacific Railroad Company,

and in consideration of such agreement and transfer did issue and deliver to the reorganization managers certificates for 750,000 shares of its fully-paid and non-assessable preferred stock and 800,000 shares of its fully-paid and non-assessable common stock, of the character described in a certain plan and agreement for the reorganization of the Northern Pacific Railroad system, dated March 16, 1896; and, furthermore, did agree at all times and in all ways and particulars to coöperate with the reorganization managers and to assist them in carrying into effect and in accomplishing the purposes of said plan and agreement of reorganization; and

Whereas, in and by the said plan and agreement of reorganization it was expressly provided that the right would be reserved by the new company (being the Northern Pacific Railway Company) to retire this preferred stock in whole or in part at par from time to time upon any first day of January during the twenty years succeeding the date of said reorganization agreement; it being the purpose and the intent of the said agreement that the ultimate control of the new company should be held and be exercised by the holders of the common stock, and that the preferred stock should, as soon as practicable, be liquidated and be paid off in cash at par; and

Whereas, upon the first day of July, 1896, at a meeting of the stockholders of the Northern Pacific Railway Company, each and every stockholder being present and voting in favor thereof, a resolution was duly adopted providing for the issue of $80,000,000 of common stock and of $75,000,000 of preferred stock of the Northern Pacific Railway Company, and expressly prescribing that such preferred stock should be issued upon the condition that at its option the company might retire the same in whole or in part, at par, from time to time, upon any first day of January prior to 1917; and

Whereas, at a meeting of the directors of the Northern Pacific Railway Company, duly held on the 8th day of July, 1896, a form of certificate for the preferred stock of the company, with the conditions and regulations to be incorporated therein or endorsed thereon, was duly adopted by the unanimous vote of the board of directors of the Northern Pacific Railway Company, including the following provision:

"The company shall have the right, at its option, and in such manner as it shall determine, to retire the preferred stock in whole or in part, at par, from time — time on any first day of January prior to 1917;" and

Whereas, at a meeting of the stockholders of the Northern Pacific Railway Company, duly held upon July 13, 1896, the said resolution of the board of directors adopting the said form of stock certificate to be issued for the preferred stock was duly ratified and ap-roved by the affirmative vote of every stockholder of the company; and

Whereas, each and every certificate for the $75,000,000 of preferred stock of the Northern Pacific Railway Company, containing

the express provision for the retirement thereof, from time to time thereafter, was issued under and pursuant to the provisions of the said resolution of July 1, 1896, and each and every certificate for stock now outstanding contains such express provision for the retirement thereof; and

Whereas, under and pursuant to section 8 of the act, chapter 244 of the Private and Local Laws of Wisconsin, approved April 15, 1895, it was expressly provided that all the affairs of this company should be managed by a board of directors who should be stockholders, and who thereby were invested with all the powers of the corporation save as thereinafter provided; and

Whereas, in and by section 11 and section 12 of the said act, chapter 244 of the Laws of 1895, it was expressly provided that this company might make its preferred stock convertible into common stock upon such terms and conditions as should be fixed by the board of directors, and that it might in its corporate name execute and deliver its notes, bonds, debentures or other evidences of indebtedness in such form as from time to time should be prescribed by the board of directors, and in such amount as should be deemed from time to time by said board expedient, and might make the same convertible into its capital stock of any class upon such terms and conditions as to the board of directors might seem advisable; and

Whereas, the holders of a majority of the common stock of the Northern Pacific Railway Company have requested the board of directors to take all such action as may be requisite to retire the whole of the preferred stock upon the first day of January, 1902, and have given satisfactory assurances that the necessary moneys for that purpose will be furnished, and that all action requisite for that purpose will be taken by the holders of the common stock; and

351 Whereas, in the judgment of the board of directors of the Northern Pacific Railway Company, it is desirable that this company should now exercise the option to retire the preferred stock in whole upon the first day of January, 1902;

Now, therefore, it is hereby unanimously

Resolved, (1) That the Northern Pacific Railway Company, in exercise of its right specifically expressed in each and every certificate of stock of this company, has determined, and hereby does determine, to retire the preferred stock of the Northern Pacific Railway Company, in whole, at par, upon the first day of January, 1902.

(2.) That notice of the retirement of the preferred stock, substantially in the form of that annexed to the minutes of this meeting, be published in the manner prescribed by the by-laws for notice of stockholders' meetings, and that a copy thereof be mailed to every stockholder of this company.

(3.) That for the purpose of raising the funds necessary to retire the preferred stock, this company will make and will issue its negotiable bonds, dated November 15, 1901, for the aggregate principal sum of $75,000,000, payable January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at this

company's office in the city of New York, with interest in like gold coin at the rate of four per cent. per annum from January 1, 1902, payable semi-annually at said office. Every such bond shall be convertible into shares of the common stock of this company, at the rate of one share of $100 for each $100 of the principal sum of such bond remaining unpaid at the date of such conversion; and upon surrender to it of any such bond this company will issue to the holder of such surrendered bond, shares of this company's common stock at the rate aforesaid. Such conversion may be made by the company at its option at any time after November 15, 1901, and shall be made at the demand of any holder of any such bond at any time on or after the first day of January, 1902. Such bonds shall be coupon bonds or registered bonds, in denominations each of $1,000 or of some multiple thereof, and shall be in such form as shall be determined by the president or the vice-president of this company. Every such bond shall be subscribed by the president or a vice-president, and by the secretary or an assistant secretary and shall be issued under the corporate seal.

(4.) That the president and the vice president of this com-
352 pany, and each of them, be, and hereby they are, authorized and empowered to contract to sell and to sell all or any of said bonds at a price not less than par and accrued interest; and in such contract to provide for the delivery of all or any part of said bonds upon receiving such payment therefor, on or prior to or after December 31, A. D. 1901; and also to covenant and agree that any and all moneys received for said bonds shall be specifically appropriated and used exclusively for the retirement of the preferred stock at par; and accordingly it is hereby expressly declared that all such proceeds shall be set apart and shall be held as a trust fund for such purpose.

Any such contract for delivery of such bonds prior to January 1, 1902, may provide for the payment of the whole or any part of the purchase price of said bonds with allowance of interest, at a rate not exceeding four per cent. per annum from the time of the receipt of the price of such bonds until January 1, 1902, the date when such bonds begin to bear interest.

Any and every such contract shall contain a provision giving to the holder of every share of this company's common stock now outstanding suitable opportunity on demand to receive through or from the purchaser of said bonds under said contract, at a price not exceeding par and accrued interest, such bonds (or a like amount of common stock received upon conversion of such bonds, if theretofore converted) to an amount equal to seventy-five eightieths of the par amount of said common stock at such time owned by such holder; and for the purpose of providing for subdivision of interests, suitable certificates representing fractional interest in bonds from time to time may be issued, and may be redeemed in such manner as shall be determined by the president or the vice-president.

(5.) That the proper officers of this company be, and hereby they

are, directed, out of the proceeds of said bonds, and out of any other moneys in the company's treasury available for that purpose, to pay at the company's New York office, to each holder of record of the preferred stock of this company on and after January 1, 1902, upon surrender of the certificates for such stock, $100 for each and every of the shares of preferred stock for which the certificates shall be so surrendered.

(6.) That all of the preferred stock of this company be, and hereby it is, declared to be retired from and after December 31, A. D. 1901; and that from and after that date all of the authorized capital stock of this company, fixed at $155,000,000 by resolution of this company's stockholders at the meeting thereof held on the first
353 day of July, 1896, be of one kind and be without preference in favor of any part thereof, and the total authorized capitalize- stock of this company continue to be $155,000,000 as so fixed at said meeting.

(7.) That the president, the vice-president, the treasurer and secretary of the Northern Pacific Railway Company be, and hereby they are, authorized from time to time to take all proceedings and to do all acts necessary or suitable to carry these resolutions fully into effect.

(8.) That for the purpose of the retirement of the preferred stock, the transfer books of the stock of this company be closed at three o'clock p. m. on Tuesday, December 10, 1901; and that the transfer books of the common stock be reopened upon Thursday, January 2, 1902, at ten o'clock a. m.

* * * * * * *

On motion, the meeting then adjourned.

GEO. H. EARL, Secretary.

Northern Pacific Railway Company.

Retirement of Preferred Stock.

To the holders of preferred stock of the Northern Pacific Railway Company:

Notice hereby is given that in exercise of the power reserved by the Northern Pacific Railway Company and specifically declared in every outstanding stock certificate, the company has duly determined to retire the preferred stock, and the same will be retired, in whole, at par, upon the first day of January, 1902. Accordingly each and every holder of preferred stock is notified to present and to surrender his certificate for such preferred stock at the office of the Northern Pacific Railway Company, 49 Wall street, in the city of New York, on and after the first day of January, 1902, and upon such surrender to receive payment in cash of the par amount thereof.

For the purpose of such retirement, the transfer books of the

Northern Pacific Railway Company will close at three o'clock p. m. on Tuesday, December 10, 1901, and the transfer books of the common stock will reopen Thursday, January 2, 1902, at ten o'clock a. m.

By order of the board of directors,

GEO. H. EARL, Secretary.

Dated November 13, 1901.

354 Northern Pacific Railway Company.

Executive Committee.

Eighty-seventh Meeting.

NOVEMBER 15, 1901.

The executive committee of the board of directors of the Northern Pacific Railway Company met, pursuant to due notice, at the office of the company, No. 49 Wall street, New York city, on Friday, November 15, 1901, at 3:30 o'clock p. m.

The following directors (constituting a quorum) were present:

Messrs. George F. Baker,
James J. Hill,
John S. Kennedy,
Charles S. Mellen.

The chairman laid before the committee a form of convertible certificate, which had been prepared to meet the requirements of the resolutions of November 13, 1901.

After consideration of such form of proposed convertible certificate, it was, by the affirmative vote of all present,

Resolved, That the form of convertible certificate now submitted by the chairman for the purpose of meeting the requirements of the resolutions of November 13, 1901, be and hereby the same is, approved; and that the president or any vice-president, and the secretary or any assistant secretary, be, and hereby they are, authorized and directed from time to time to make and execute such convertible certificates for the aggregate principal sum of $75,000,000; and that the proper officers of the company be, and hereby they are, authorized from time to time to issue the same for the purposes, and upon the terms specified in the said resolutions of November 13, 1901.

The chairman then laid before the committee a form of agreement or contract with the Standard Trust Company of New York as contractor, for the sale and delivery of such convertible certificates at a price not less than par and accrued interest, as provided for in the fourth of said series of resolutions adopted November 13, 1901.

On motion, and by the affirmative vote of every member present, it was

Resolved, That the president and vice-president of this company, and each of them, be and hereby they are, authorized and empowered to execute and deliver the said contract under the cor-

porate seal of this company, and that the secretary be, and hereby he is, authorized to affix the corporate seal and to attest the same.

355 On motion, the following resolutions were unanimously adopted:

Resolved, That the president or vice-president be, and hereby he is, authorized to sell, at their par value, on or before January 1, 1902, to any holder of common stock of this company, an amount of the convertible certificates of this company authorized by the resolutions of the board of directors, passed November 13, 1901, equal to seventy-five eightieths of the par amount of the common stock held by such stockholder, provided that in case any such sale shall be made to any stockholder prior to the closing of the transfer books on December 10, 1901, such arrangements shall be made as will prevent any transfer of such stock before the re-opening of the transfer books on January 2, 1902, except subject to the condition that the transferees and subsequent holders of such stock shall release any and all right to purchase any of such bonds from this company.

Resolved, That to the extent of any moneys received by this company from sales of convertible bonds of the issue authorized by the board of directors by the resolutions passed November 13, 1901, the president or vice-president be, and hereby he is, authorized to retire or take up any of the preferred stock of this company and to pay therefor upon surrender of the certificates for such preferred stock, duly endorsed in blank for transfer a sum equal to the par value of such preferred stock; and in case any such preferred stock shall be retired or taken up prior to the closing of the transfer books on December 10, 1901, a sum equal to the dividend of one per cent. thereon declared payable on January 1, 1902, shall be paid to such holder out of the surplus of the company.

Resolved, That to the extent that preferred stock of this company shall have been retired or taken up, the president or vice-president be authorized to cause the convertible certificates of this company that shall have been issued under the resolutions of the directors passed November 13, 1901, to be converted at par into common stock, and to cause the common stock of this company to be issued upon any such conversion.

Resolved, That the officers of this company be authorized and directed, under the direction of the president or vice-president, to do all acts and things required to carry the foregoing resolutions into effect.

On motion, the meeting then adjourned.

GEO. H. EARL, Secretary.

356 No. —. UNITED STATES OF AMERICA. $—.

Northern Pacific Railway Company.

Temporary Four Per Cent. Convertible Certificate.

Northern Pacific Railway Company (hereinafter termed the "railway company"), for value received, promises to pay to bearer, or to the registered holder of this certificate, if the same shall be registered, on the first day of January, 1907, upon presentation and surrender of this certificate for cancellation, at its office in the city of New York, — dollars, in the gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent. per annum from January 1, 1902, such interest being payable at said office, in like gold coin semi-annually, on the first day of January and the first day of July in each year, to the bearer or to the registered holder of this certificate, upon presentation of the certificate and endorsement of such payment thereon. Both the principal and interest of this certificate are payable without deduction for any tax or taxes which the railway company may be required to pay or to retain therefrom, under any present or future law of the United Sates, or of any State, county or municipality therein.

Upon demand of the holder of this certificate at any time after January 1, 1902, and upon presentation and surrender of this certificate for cancellation, this certificate shall be convertible into common stock of the railway company, at the rate of one share of $100 for each $100 of the unpaid principal of this certificate, and upon such demand and such presentation and surrender of the certificate, the railway company will issue to the holder its common stock at the rate aforesaid. In case the railway company shall fail to make such conversion, then and in every such case, at the option of the holder, the principal of this certificate shall become and be forthwith due and payable, with the interest accrued and unpaid.

At any time after the date hereof, at its election, the railway company may require the holder of this certificate to convert the same into common stock of the railway company, at the rate of one share of $100 for each $100 of the unpaid principal of this certificate; and upon advertisement by the railway company of such election, in either "The New York Times" or "The New York Tribune,"
357 newspapers published in the city of New York, the holder shall, upon presentation and surrender hereof, be entitled to receive common stock of the railway company at the rate of one share of $100 for each $100 of the unpaid principal of this certificate; and from and after such advertisement no interest shall accrue or be payable upon or in respect of this certificate from the interest day next preceding the date of such advertisement, and the principal of this certificate shall not be payable in cash, but the

holder shall be entitled only to receive common stock of the railway company in exchange for this certificate as hereinbefore provided.

This temporary certificate is exchangeable for an engraved or lithographed certificate when the same shall be ready for delivery and is one of a series of similar certificates of the railway company, issued and to be issued for the aggregate principal sum of $75,000,000, such issue having been authorized by resolution of the board of directors of the railway company passed November 13, 1901, to which reference hereby is made. All moneys received for the certificates of said issue have been specifically appropriated and will be used exclusively for the retirement at par of the preferred stock of the railway company, and will be set apart as a trust fund for such purpose.

This certificate may be registered in the owner's name on the books of the railway company, at its office or agency in the city of New York, such registry being noted on the certificate by the certificate registrar of the railway company. After such registration, no transfer shall be valid unless made on the railway company's books by the registered owner and similarly noted on the certificate; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored; but this certificate again from time to time may be registered or transferred to bearer as before.

In witness whereof, the Northern Pacific Railway Company has caused these presents to be signed by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary or an assistant secretary, this fifteenth day of November, 1901.

NORTHERN PACIFIC RAILWAY COMPANY,

[L. S.] By —— ——, President.

Attest:

—— ——, Secretary.

358 Memorandum of agreement, made this — day of November, A. D. 1901, by and between Northern Pacific Railway Company, a corporation of the State of Wisconsin, of the first part, and the Standard Trust Company of New York, a corporation of the State of New York (hereinafter termed the "trust company"), of the second part,

Witnesseth, that the parties hereto have mutually agreed as follows:

Article I.

On January 1, 1902, Northern Pacific Railway Company agrees to sell and to deliver to the trust company, and the trust company agrees to buy from Northern Pacific Railway Company,

at their face value, all the convertible certificates of indebtedness of the Northern Pacific Railway Company for the aggregate principal sum of seventy-five million dollars ($75,000,000), of the issue authorized by vote of the directors of said company passed November 13, 1901, except such of said certificates as shall be purchased by the holders of the common stock of said corporation, as recited in article III, of this agreement.

Such convertible certificates are to be dated November 15, 1901; and to be payable on January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at company's office in the city of New York, and to bear interest in like gold coin at the rate of four per cent. per annum from January 1, 1902, payable semi-annually at said office. Every such certificate shall be convertible into shares of the common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars ($100) par value for each one hundred dollars ($100) of the principal of such certificate remaining unpaid at the date of such conversion; and upon surrender to it of any such certificate said railway company will issue to the holder of such surrendered certificate shares of its common stock at the rate aforesaid. Such conversion may be made by the Northern Pacific Railway Company, at its option, at any time after November 15, 1901, and shall be made at the demand of any holder of any such certificate at any time on or after January 1, 1902. Such certificates shall be in denominations each of one thousand dollars, or some multiple thereof, and shall be substantially of the tenor of the draft thereof, marked "Exhibit A," hereto attached.

359 Until engraved or lithographed certificates can be prepared, temporary certificates, in form satisfactory to the trust company, shall be deliverable hereunder, which temporary certificates shall be exchangeable for engraved or lithographed certificates as soon as the same shall be ready for delivery.

Article II.

Northern Pacific Railway Company covenants and agrees with the trust company that all moneys received for such certificates shall be specifically appropriated and used exclusively for the retirement of the preferred stock of the Northern Pacific Railway Company at par, and shall be set apart as a trust fund for such purpose.

Article III.

It is understood and agreed that suitable opportunity shall be given to every holder of common stock of the Northern Pacific Railway Company registered at the closing of the transfer books on December 10, 1901, to purchase and to pay for, at the price hereinafter stated, an amount of such certificates (subject to a proper adjustment for fractional amounts of certificates) equal to seventy-five eightieths

of the par amount of such common stock owned of record by such stockholder.

At any time prior to the sale and delivery of such certificates to the trust company, the Northern Pacific Railway Company may sell and deliver, at the price hereinafter stated, to any such holder of common stock, the amount of such certificates which such holder of the common stock is to be given such opportunity to purchase; but in case any such sale be made to any stockholder prior to the closing of the transfer books on December 10, 1901, such arrangements shall be made as will prevent any transfer of such stock before the reopening of the transfer books on January 2, 1902, except subject to the condition that the transferees and subsequent holders of such stock, prior to such reopening of the transfer books, shall release any and all right to purchase any of such certificates from the Northern Pacific Railway Company. As soon as practicable the Northern Pacific Railway Company, by notice, shall extend to each holder of its common stock registered at the closing of the transfer books on December 10, 1901, suitable opportunity, until January 1, 1902, to purchase, at the price hereinafter stated, an amount of such
360 certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

After the sale and delivery to the trust company of such of said certificates as shall not have been purchased by the stockholders of the Northern Pacific Railway Company, the trust company will give to every holder of common stock of said company registered at the closing of the transfer books on December 10, 1901 (other than holders of common stock who previously shall have purchased, or shall have had suitable opportunity to purchase, a ratable share of such certificates, as aforesaid), suitable opportunity, not later than March 1st, 1902, to receive, on demand, through or from the trust company, upon payment to the trust company of the price hereinafter stated, an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder (or a like amount of common stock received upon conversion of such certificates if theretofore converted).

The price payable for all such certificates sold under this article on or before January 1, 1902, shall be a sum equal to the principal thereof. The price payable for all such certificates sold and delivered under this article after January 1, 1902, shall be a sum equal to the principal thereof, and the interest accrued thereon. The price payable for any stock received upon conversion of such certificates shall be the same as the price which would have been payable for a corresponding amount of such certificates.

Under the provisions of this article every such holder of common stock shall *only* be given the opportunity to purchase, either from the trust company or from the Northern Pacific Railway Company, such amount of such certificates (or stock) as in the aggregate shall

be equal to seventy-five eightieths of the par amount of the common stock owned of record by such stockholder at the closing of the transfer books on December 10, 1901.

Article IV.

In case the Northern Pacific Railway Company shall fail to sell and to deliver such certificates to the trust company at the times and in the manner herein provided, or shall fail to comply with all its agreements herein contained, or in case the Northern
361 Pacific Railway Company shall fail to issue its common stock in exchange for all certificates delivered hereunder to the trust company when and as demand therefor shall be made by the trust company or other holder, then and in any such case the trust company, at its option, by notice delivered at the office of the Northern Pacific Railway Company in the city of New York, may forthwith rescind this agreement, and thereupon the Northern Pacific Railway Company, upon surrender to it of any such certificates, shall be bound to repay to the trust company or other holder the price paid for such certificates hereunder, with proper allowance of interest.

This agreement shall be deemed strictly *inter partes*, and shall not give any rights to any person or corporation except the trust company and the Northern Pacific Railway Company, except as provided in the certificates themselves.

In witness whereof, the parties hereto have caused these presents to be signed by their officers duly authorized the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

By ——— ———.

THE STANDARD TRUST COMPANY OF NEW YORK,

By ——— ———.

Northern Pacific Railway Company.

Executive Committee.

Eighty-eighth Meeting.

NOVEMBER 18, 1901.

The executive committee of the board of directors of the Northern Pacific Railway Company met, pursuant to due notice at the office of the company, No. 49 Wall street, New York city, on Monday, November 18, 1901, at 2 o'clock p. m.

The following directors (constituting a quorum) were present:

Messrs. George F. Baker,
Edward H. Harriman,
James J. Hill,
John S. Kennedy,
Charles S. Mellen.

* * * * * * *

362 On motion the following resolutions were unanimously adopted:

Resolved, That the president or vice-president cause to be engraved and printed new forms of stock certificates of this company to be issued after January 1, 1902, on which date the retirement of the preferred stock of this company is to take effect, which new forms of stock certificates shall be substantially of the following tenor, to wit:

Capital Stock, $155,000,000.

No. —. — Shares.

Northern Pacific Railway Company.

This is to certify that —— —— is the owner of —— fully-paid and non-assessable shares, of the par value of one hundred dollars each, in the capital stock of the Northern Pacific Railway Company, transferable only in person, or by attorney, upon the books of the company, at the office of its transfer agents in the city of New York, upon surrender of this certificate.

This certificate is not valid unless registered by the registrar of transfers of the company in the city of New York.

Witness the signatures of the president or one of the vice-presidents of said company, and of J. P. Morgan & Co., its transfer agents in the city of New York.

New York, ——.

—— ——,
Vice-President.

—— ——,
Transfer Agents.

Registered:
CENTRAL TRUST COMPANY OF NEW YORK,
By —— ——, Registrar.
—— ——, Secretary.

Resolved, That until January 2, 1902, and until the common stock to be issued in exchange for the convertible certificates of this company, issued and to be issued under the resolutions of the board of directors, passed November 13, 1901, shall have been listed
363 at the New York stock exchange, the president or vice-president, and the secretary, in behalf of the company, shall cause to be executed and delivered temporary certificates for any such common stock to be issued upon the conversion into common stock of any such convertible certificates, which temporary stock certificates shall be signed by the president or vice-president and by the secretary, but shall not require the signature of the transfer agents, and shall not be registered by the registrar of transfers; and such temporary stock certificates shall be substantially of the following tenor, viz.:

No. —. — Shares.

Northern Pacific Railway Company.

Temporary Certificate of Common Stock.

Issued upon conversion of 4% convertible certificates under resolutions of the board of directors passed November 13, 1901.

This is to certify that —— —— is the owner of —— fully paid and non-assessable shares, of the par value of one hundred dollars each, of the common capital stock of the Northern Pacific Railway Company, transferable only in person or by attorney upon the books of the company upon surrender of this certificate.

Witness the signatures of the president, or one of the vice-presidents, of said company, and of the secretary, this — day of —— —.

—— ——, Vice-President.
—— ——, Secretary.

Resolved, That the secretary be, and hereby he is, authorized and directed in behalf of the company, to issue and publish and offer to stockholders of common stock of record on December 10, 1901, substantially as follows:

Northern Pacific Railway.

Offer to Holders of Common Stock.

NEW YORK, November 23, 1901.

To holders of common stock of Northern Pacific Railway Company of record December 19, 1901:

364 Every holder of the common stock of the Northern Pacific Railway Company registered as such at the closing of the transfer books on Tuesday, December 10, 1901, will have, and hereby is offered, the opportunity to purchase at par, to an amount equal to seventy-five eightieths of the par amount of the common stock held by him at the closing of the transfer books on December 10, 1901, convertible certificates of indebtedness of the Northern Pacific Railway Company, part of a total issue for $75,000,000 authorized by vote of the directors of the company passed November 13, 1901.

Such convertible certificates are to be dated November 15, 1901, and to be payable on January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at the company's office, in the city of New York, and to bear interest in like gold coin at the rate of four per cent. per annum from January 1,

1902, payable semi-annually at said office. Every such certificate shall be convertible into shares of the common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars ($100) par value for each one hundred dollars ($100) of the principal of such convertible certificate remaining unpaid at the date of such conversion, and upon surrender to it of any such convertible certificate the railway company will issue to the holder of such surrendered convertible certificate, shares of its common stock at the rate aforesaid. Such conversion may be made by the Northern Pacific Railway Company at its option at any time after November 15, 1901, and shall be made at the demand of any holder of any such certificate at any time on or after January 1, 1902.

Such convertible certificates shall be in denominations each of one thousand dollars or some multiple thereof, and shall be substantially of the tenor of the draft thereof on file in the New York office of the railway company. For any fractional interest to which any common stockholder may be entitled under this offer, there will be issued scrip representing such fractional interest redeemable in convertible certificates when presented in even equivalents.

All of the moneys received for such convertible certificates will be specifically appropriated and used exclusively for the retirement of the preferred stock of the Northern Pacific Railway Company at par, and will be set apart as a trust fund for such purpose.

The railway company has contracted to sell and deliver to
365 other parties on the same terms all of said issue of convertible certificates of indebtedness except such as shall be purchased by the holders of the common stock.

Payments for such convertible certificates must be made at the office of the Northern Pacific Railway Company at 49 Wall street, New York, on or before December 31, 1901. Convertible certificates in temporary form will be ready for delivery, and payment therefor may be made, at said office at any time during business hours from and after December 11, 1901.

Stockholders desiring to avail of this opportunity to purchase such convertible certificates must file their application therefor in the form herewith enclosed on or before December 24, 1901.

By order of directors,

GEORGE H. EARL.

Northern Pacific Railway Company.

Directors' Eighty-fifth Meeting.

JANUARY 8, 1902.

At a meeting of the board of directors held, pursuant to due notice, at the office of the company, No. 49 Wall street, New York city, on Wednesday, January 8, 1902, at 2 p. m., there were present the following directors (constituting a quorum) viz.:

Messrs. Baker,
Clough,
Harriman,
Ives,
James,
Kennedy,
Lamont,
Mellen,
Rockefeller,
Steele,
Spencer,
Stillman,
Thomas,
Twombly.

The minutes of meeting held December 11, 1901, were read and approved.

The executive committee reported by the reading of the
366 minutes of its meetings held November 15th and 18th, 1901, December 14th, 1901, and January 2, 1902, and on motion the committee's action as reported was approved, ratified and confirmed.

The president submitted the following forms of notices which had been duly published, to wit:

Northern Pacific Railway Co.

Notice that Preferred Stock Has Been Retired.

To the holders of certificate- for preferred stock of the Northern Pacific Railway Company:

Notice is hereby given that in the exercise of the power reserved by the Northern Pacific Railway Company and specifically declared in every stock certificate issued and outstanding prior to Nov. 15, 1901, the company has retired the preferred stock and the same was retired in whole upon the 1st day of January, 1902. Each and every holder of a certificate for preferred stock not heretofore surrendered is notified that upon presentation and surrender of his certificate at the office of the Northern Pacific Railway Company, 49 Wall street, in the city of New York he will receive payment in cash of the par amount of such certificate.

No holder of any certificate for preferred stock now has or hereafter will have any right as stockholder nor any claim against the company, except to receive payment for certificates surrendered at the rate above stated.

Dated January 2, 1902.

By order of the directors.

GEORGE H. EARL, Secretary.

Northern Pacific Railway Co.

Notice to Holders of 4 % Convertible Certificates.

JANUARY 2, 1902,

Notice is hereby given to all holders of four per cent. convertible certificates of the Northern Pacific Railway Company, dated November 15, 1901, and issued under and pursuant to the resolutions of the board of directors of this company adopted November 13, 1901, that the railway company has elected to require and hereby does require the holder of every such certificate to convert the same
367 into common stock of the Northern Pacific Railway Company at the rate of one share of $100 for each $100 of the unpaid principal of the certificate and upon presentation and surrender of such certificate at the office of this company, 49 Wall street, in the city of New York, the holder will be entitled to receive therefor common stock of the railway company at the rate aforesaid. No interest will accrue or be payable upon or in respect of any such certificate from and after the first day of January, 1902.

By order of the directors.

NORTHERN PACIFIC RAILWAY COMPANY,
By DANIEL S. LAMONT, Vice-President.

Attest:
GEORGE H. EARL, Secretary.

On motion it was

Resolved, That the issuance and publication of the foregoing notices be and the same hereby is approved and ratified.

The president reported that pursuant to the resolutions and instructions of the directors, $75,000,000 of convertible 4% certificates were sold by the officers of the company at par, and the proceeds deposited with the fiscal agents of the company for the redemption of the whole of the preferred stock cartificates which were duly retired January 1st, of which certificates for 713,140 shares have already been redeemed and canceled; and that the entire issue of $75,000,000 of convertible certificates has been exchanged by its owners for a like amount of the common stock of the company, at par, making the present capital of the company consist of 1,550,000 shares of common stock, at $100 each.

Mr. Clough gave notice that at the next regular meeting of the board he would move for adoption the following resolutions for amendment of the by-laws.

Resolved, That section 3 of article I, concerning notice of meetings of stockholders, be amended by changing the words "four" and "three" to "two" before the word "weeks," and by striking out the words "St. Paul" "London and Berlin," so that the same shall read as follows:

SECTION 3. Notice of meetings.—Written or printed notice of every meeting of stockholders shall be advertised at least once in each week for two weeks immediately preceding such meeting in one or
368 more daily or weekly newspapers published in the cities of Milwaukee and New York, which notice shall, in general terms state the object of the meeting. At least two weeks before such meeting a copy of such notice shall be mailed from one of the offices of the company to each stockholder of record who shall have furnished to the company's stock transfer agents in the city where the certificates of such stockholder shall have been issued, an address to which such notice may be sent; but failure to mail any such notice shall not invalidate any action taken at such meeting or at any adjournment thereof.

Resolved, That section 4 of article I, of the by-laws be amended by striking out and cancelling the last paragraph thereof as follows:

These provisions, however, are subject to the rights of the holders of preferred stock.

Resolved, That section 5, section 6 and section 7 of article II of the by-laws be, and hereby the same are, repealed, and in lieu thereof the following section be, and hereby the same is, adopted:

SECTION 5. Meetings of the board.—Meetings of the board shall be held whenever called, by direction of the president or of the vice-president or of any three of the directors for the time being in office.

The secretary or the assistant-secretary shall give notice of each meeting, by mailing the same at least two days before the meeting, or by telegraphing the same at least one day before the meeting, to each director; but such notice may be waived by any director.

Unless otherwise indicated in the notice thereof, any and all business may be transacted at any meeting.

At any meeting at which every director shall be present, even though without notice, any business may be transacted.

Resolved, That section 10 of article II. of the by-laws be amended so as to read as follows:

SECTION 8. Executive committee.—The executive committee shall consist of six (6) directors, of whom the president, and in case of his absence from the meeting, the vice-president, shall be one *ex-officio*. It shall possess and exercise all the powers of the board of directors, except when the latter is in session, but it may act only by the concurrent vote of not less than four (4) in number. It shall keep a record of all its proceedings, and the same shall be submitted to the board of directors. The executive committee shall have the power to fill any vacancy in its own number, but the director so chosen
369 shall serve as a member of the committee only until the next meeting of the board of directors, or until a successor shall have been elected by the board. The secretary, or, in his absence from the meeting, an assistant-secretary, or other officer or employee of the company may act as secretary of the committee. A majority of the committee shall be a quorum. Meetings of the executive committee shall be held whenever called by the direction of the

president or of the vice-president or of any two members of the committee.

The secretary or the assistant secretary shall give notice of each meeting by mailing the same, or by telegraphing the same, one day before the meeting, to each member; but such notice may be waived by any member.

Unless otherwise indicated in the notice thereof, any and all business may be transacted at any meeting.

At any meeting at which every member of the committee shall be present, even though without notice, any business may be transacted.

Resolved, That section 8, section 9, section 10 and section 11, of article II. of the by-laws, be amended so as to be numbered, respectively, section 6, section 7, section 8 and section 9.

Resolved, That section 4 of article III. of the by-laws be, and hereby the same is, amended by striking out the second paragraph thereof.

Resolved, That the first clause of subdivision (*b*) of section 1 of article IV. of the by-laws be, and hereby the same is repealed.

On motion, the secretary was instructed to send to each director at least ten days before the next regular meeting a copy of the proposed amendments.

On motion, the meeting then adjourned.

GEO. H. EARL, Secretary.

370 In the Circuit Court of the United States for the District of New Jersey.

EDWARD HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Plaintiffs,

against

NORTHERN SECURITIES COMPANY, Defendant.

STATE OF NEW YORK, City and County of New York, } ss.:

I, Frances M. Keller, a notary public in and for the city and county aforesaid, do hereby certify that on this 2nd day of May, 1904, Edward T. Nichols came before me, and having been first duly sworn, did depose and say:

I am 51 years of age and live in Morristown, in the State of New Jersey; since November 14, 1901, I have continuously been secretary of the said company, and a director, and as such have attended all meetings of the board of directors of said company, and as secretary have made all entries of the minutes of the proceedings of said board in the records of said company.

During all the period aforesaid Mr. Edward H. Harriman, one of the petitioners aforesaid, has also been a director, and a member of the executive committee of the Northern Securities Company.

During said period meetings of said board were held on the following named dates, to wit: November 14, 1901, November 19, 1901, December 9, 1902, January 22, 1903, April 17, 1903, November 18, 1903, March 22, 1904, at all of which meetings said Harriman attended, and in the proceedings of which he participated, as a director of the Northern Securities Company.

At the said meeting of November 19, 1901, proceedings were had, with the assent and by the affirmative vote of the said Harriman as such director, as set forth in Exhibit No. 1, hereto attached.

The minutes of a previous meeting of said board, held on November 15, 1901, which minutes were approved by the said board, at the meeting of November 19th, 1901, are set forth in Exhibit No. 2, hereto attached.

At the said meeting of January 22, 1903, proceedings were
371 had, with the assent and by the affirmative vote of the said Harriman, as such director, set forth in Exhibit No. 3, hereto attached.

Meetings of the executive committee of the Northern Securities Company, at which the said Harriman was present, and in the proceedings of which he participated, were held on November 27, 1901, December 19, 1901, January 31, 1902, July 24, 1902, October 16, 1902, January 29, 1903, April 15, 1903, January 11, 1904, and February 24, 1904.

Annual meetings of the stockholders of the Northern Securities Company, for the election of directors, and the transaction of other business, were held at the company's offices in Hoboken, New Jersey, on November 10, 1902, and November 9, 1903.

At each of said meetings the said Harriman and Pierce attended, by myself as their proxy, and participated in all the business transacted at said meetings.

True copies of said proxies are hereto attached as Exhibits 4 and 5.

EDWARD T. NICHOLS.

Subscribed and sworn to before me in the city of New York, this 2nd day of May, 1904.

FRANCES M. KELLER,
[L. S.] Notary Public, N. Y. Co.

Northern Securities Company.

Incorporators' First Meeting.

NOVEMBER 13, 1901.

The first meeting of the incorporators of the Northern Securities Company was held at the office of the Hudson Trust Company, at

No. 51 Newark street, in the city of Hoboken, New Jersey, on Wednesday, the 13th day of November, 1901, at 12 o'clock noon.

There were present: George F. Baker, Jr., Abram M. Hyatt and Richard Trimble being all the incorporators and all the subscribers to the capital stock of the company.

The following proceedings were had.

The meeting was called to order by Mr. Baker, and on motion, Mr. Hyatt was elected chairman and Mr. Trimble was elected secretary.

372 Mr. Hyatt took the chair, and Mr. Trimble presented a copy of the certificate of incorporation of the company, which was duly recorded in the office of the clerk of Hudson county, New Jersey, on November 13, 1901, and duly filed in the office of the secretary of state of New Jersey on November 13, 1901. It was ordered that a copy thereof be prefixed to the minutes of this meeting.

Mr. Trimble then presented a waiver of notice of this meeting and it was ordered that the same be filed with the Secretary.

Mr. Trimble thereupon submitted for the consideration of the incorporators a set of by-laws. After some discussion, and on motion and by affirmative vote of all present, it was

Resolved, That the by-laws now submitted to this meeting by Mr. Trimble be and hereby the same are adopted as the by-laws of the corporation, subject to alteration or amendment thereof as therein provided from time to time by the board of directors, and that a copy thereof be affixed to the minutes of this meeting.

Upon motion and by affirmative vote of all present, it was

Resolved, That the incorporators do proceed to the election of the first board of directors of the company, such board to consist of three directors and to be classified, as provided in the by-laws and certificate of incorporation, by electing one director for a term of one year, one for a term of two years and one for a term of three years; and that Mr. August T. Pupke and Mr. James H. P. Reilly, be, and hereby they are, appointed inspectors of election.

The inspectors having duly qualified, the polls were opened, and remained open until all the incorporators and subscribers to the capital stock of the company had voted; the polls thereupon being closed, the vote was canvassed and the inspectors reported that the ballot showed that the following named persons were unanimously elected directors for the terms set opposite their respective names, votes representing three hundred (300) shares having been cast for each of such persons, that is to say:

First class: George F. Baker Jr.—to hold office for one year;

Second class: Abram M. Hyatt—to hold office for two years.

Third class: Richard Trimble—to hold office for three years.

The chairman then presented to the meeting an instrument, signed by all the incorporators and subscribers to the capital stock of the company, waiving assessments and notice of assessments on

their subscriptions, and it was ordered that such instrument be filed with the secretary.

On motion and by affirmative vote of all present, it was

373 *Resolved*, That the directors assess the stock heretofore subscribed for one hundred (100) per cent., in accordance with the terms of the waiver signed by the subscribers.

The following resolutions were adopted by affirmative vote of all present:

Resolved and ordered, That in compliance with the laws of the State of New Jersey (revision of 1896, approved April 21, 1896) this corporation have and continuously maintain a principal office and place of business with the State of New Jersey and have an agent at all times in charge thereof and upon which agent process against this corporation may be served, and therein keep the stock and transfer books for the inspection of all who are entitled to see the same and for the transfer of stock; that the books in which the transfers of stock shall be registered and the books containing the names of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at such principal office; and that the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this State.

Resolved and ordered, That until the location of the principal office of the company shall be changed by the stockholders or by the board of directors, as authorized by law, the principal office and place of business of the company be in and at the office of the Hudson Trust Company, at No. 51 Newark street, Hoboken, New Jersey.

Resolved and ordered, That until otherwise directed by the board of directors, the Hudson Trust Company be, and hereby it is, appointed agent of this corporation, upon whom legal process against this corporation may be served within the State of New Jersey, and also the transfer agent of the stock of this corporation.

On motion, the meeting thereupon adjourned.

—— ——, Secretary.

Northern Securities Company.

Directors' First Meeting.

NOVEMBER 13, 1901.

The first meeting of the board of directors of Northern Securities Company was held at the office of the Hudson Trust Company, No. 51 Newark street, Hoboken, N. J., on November 13th, 1901, at twelve thirty o'clock in the afternoon.

374 Present: George F. Baker, Jr., Abram M. Hyatt, Richard Trimble, being all the directors.

On motion, Mr. Hyatt was elected temporary chairman and Mr. Trimble was elected temporary secretary of the meeting.

Mr. Hyatt took the chair and called the meeting to order.

Mr. Trimble then presented the minutes of the meeting of the incorporators and subscribers to the company's capital stock held this 13th day of November, 1901, and also a waiver of notice of this meeting signed by all the directors.

Upon motion, it was

Resolved, That the board proceed to the election of officers by ballot.

Mr. Hyatt was nominated for president, and, no other nominations being made a ballot was taken, and Mr. Hyatt was unanimously elected president.

Mr. Trimble was nominated for secretary, and, no other nominations being made, a ballot was taken, and Mr. Trimble was unanimously elected secretary.

Mr. Baker was nominated for treasurer, and, no other nominations being made, a ballot was taken, and Mr. Baker was unanimously elected treasurer.

The secretary then took and subscribed his oath as secretary of the corporation, which was duly filed.

Upon motion it was

Resolved, That the treasurer be, and hereby is, authorized to open a bank account in behalf of the corporation with Hudson Trust Company, 51 Newark St., Hoboken, New Jersey.

Upon motion it was unanimously

Resolved, That until otherwise ordered, the president and treasurer be authorized to draw checks of this company for any sums on deposit with any depositary of this company; and that all checks of the company be signed by the president and the treasurer.

Upon motion, by affirmative vote of all present, it was

Resolved, That an office of the company be maintained in the city of New York, and that meetings of the board of directors from time to time may be held either at the principal office of the company in the State of New Jersey or at the office in the city of New York or elsewhere as from time to time shall be ordered by the board of directors.

The treasurer then called attention to the written subscriptions to the capital stock of the company to the amount of three hundred shares of one hundred dollars each, amounting in the aggregate to thirty thousand dollars ($30,000).

375 On motion, by affirmative vote of all present, it was

Resolved, That a call be made for the payment in full of subscriptions to the capital stock of the corporation, such call to be payable upon demand of the treasurer.

On motion, by affirmative vote of all present, it was

Resolved, That until otherwise ordered by the board of directors the common corporate seal is and shall be an impression upon paper or wax of a circular device such as that to be impressed upon the margin hereof, being the words "November, 1901" in a centre, surrounded by the words "Northern Securities Company, New Jersey;" and that the secretary of the company procure, preserve and keep

duplicate stamps for making such impressions of such corporate seal; and, when and as directed by the board of directors or by the president, or any vice-president, the secretary or any assistant secretary may and shall use one or the other of such duplicate stamps in impressing such corporate seal upon the documents, indentures and obligations of the company.

The secretary presented to the board a draft of certificates for stock of the company, and

On motion and by affirmative vote of all present, it was

Resolved, That the certificates to be issued by this company for stock be of the tenor of the draft certificate now submitted, but that pending the preparation of engraved certificates of such tenor, temporary certificates in form satisfactory to the president and treasurer may be issued.

On motion and by affirmative vote of all present, it was

Resolved, That the proper officers of the company be, and hereby they are, authorized and directed in behalf of the company and under its corporate seal or otherwise, to make and file any certificate or other instruments required by law to be filed in any State in which the officers of this company shall find it necessary to file the same as a condition of transacting the business of the corporation in that State.

On motion, the meeting thereupon adjourned to meet at the office of the Hudson Trust Company, 51 Newark St., Hoboken, New Jersey, at four o'clock this afternoon.

—— ——, Secretary.

376 Northern Securities Company.

Directors' First Meeting (Adjournment).

NOVEMBER 13, 1901.

Meeting of the board of directors of the Northern Securities Company, held pursuant to adjournment at No. 51 Newark street, in the city of Hoboken, on Wednesday, November 13, 1901, at four o'clock p. m.

Present: George F. Baker, Jr., Abram M. Hyatt, Richard Trimble.

The treasurer reported that he had received $30,000 in full payment of the 300 shares of the capital stock of the company, subscribed for by the three subscribers to the certificate of incorporation.

Upon motion, and by the affirmative vote of all the directors, it was

Resolved, That the officers of this company be, and hereby they are, authorized and directed to make and file in the office of the secretary of state a certificate stating that the capital stock with which this company is to begin business—viz., $30,000—has been paid in, in cash.

Upon motion, and by the affirmative vote of all the directors, it was

Resolved, That certificates for the fully-paid up shares of the capital stock of this company subscribed for by the three subscribers to the certificate of incorporation, be issued to such subscribers.

Upon motion, and by the affirmative vote of all the directors, the following resolution was adopted:

Resolved, That the president be, and hereby he is, authorized, for and in behalf of this company, to purchase any shares of the common capital stock of the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, that shall be tendered to this company at a price not exceeding $115 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid-up shares of the capital stock of this company at par, the board of directors having adjudged and determined, and hereby adjudging and determining, that the value of such shares of the capital stock of the Northern Pacific Railway Company is at least $115 per share.

377 *Resolved*, That the proper officers of the company be, and hereby they are, authorized and directed from time to time to make, execute and deliver proper certificates for the fully paid-up shares of the capital stock of this company in payment for any stock of the Northern Pacific Railway Company acquired pursuant to the foregoing resolution, at the price therein stated.

On motion duly seconded, and by the affirmative vote of all present, the following resolutions were unanimously adopted:

Resolved, That Manhattan Trust Company of New York be, and hereby is appointed registrar of transfers of the stock of this company.

Resolved, That Hudson Trust Company, of Hoboken, New Jersey, be and hereby is appointed transfer agent of the stock of this company.

Resolved, That Hudson Trust Company be and hereby is appointed agent of this corporation upon whom legal process against this corporation may be served within the State of New Jersey.

Upon motion, the meeting adjourned.

—— ——, Secretary.

Northern Securities Company.

Directors' Second Meeting.

NOVEMBER 14, 1901.

Meeting of the board of directors of the Northern Securities Company, duly held pursuant to notice of adjournment at No. 51 Newark street, in the city of Hoboken, on Thursday, November 14, 1901, at ten o'clock a. m.

Present: George F. Baker, Jr., Abram M. Hyatt, Richard Trimble.

Upon motion, and by the affirmative vote of all the directors, the following resolution was adopted:

Resolved, That the president be, and hereby he is, authorized, for and in behalf of this company, to purchase any shares of the preferred capital stock of the Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, that shall be tendered to this company at a price not exceeding $180 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid-up shares
378 of the capital stock of this company at par, the board of directors having adjudged and determined, and hereby adjudging and determining that the value of such shares of the capital stock of the Great Northern Railway Company is at least $180 per share.

Resolved, That the proper officers of the company be, and hereby they are, authorized and directed from time to time to make, execute and deliver proper certificates for the fully paid-up shares of the capital stock of this company, in payment for any stock of the Great Northern Railway Company acquired pursuant to the foregoing resolution, at the price therein stated.

On motion duly seconded, and by the affirmative vote of all present, the following resolutions were unanimously adopted:

Resolved, That a meeting of the board of directors be, and hereby the same is, called to be held at 31 Nassau street, in the city of New York, on Thursday, the 14th day of November, 1901, at two o'clock in the afternoon.

The secretary reported that, pursuant to the request of Messrs. George F. Baker, Jr., Abram M. Hyatt, and Richard Trimble, out of the shares of stock held by the said gentlemen in the Northern Securities Company, there have been transferred shares of stock of this corporation to the following-named gentlemen to the amount set opposite their names, respectively, viz.:

To John S. Kennedy	1 share
D. Willis James	1 "
Samuel Thorne	1 "
Jas. J. Hill	1 "
E. T. Nichols	1 "
George F. Baker	1 "
Robert Bacon	1 "
Geo. W. Perkins	1 "
D. S. Lamont	1 "
E. H. Harriman	1 "
Jacob H. Schiff	1 "
James Stillman	1 "
W. P. Clough	1 "
George C. Clark	1 "
N. Terhune	1 "

On motion, duly seconded, and by the affirmative vote of all present, being all of the directors of the company, it was

Resolved, That the by-laws of the company be, and hereby they are, amended in the following manner, to wit:

379 The third paragraph of section 1 of article II. is hereby amended as follows, viz., by striking out the following words:

"The number of the first board of directors shall be three, but the number of directors may be altered from time to time, and so soon as deemed advisable by the first board of directors, shall be increased to fifteen, by the alteration of these by-laws,"

and by inserting in place thereof the following:

"The number of the board of directors shall be fifteen, but the number of directors may be altered from time to time by the alteration of these by-laws."

Upon motion, and by the affirmative vote of every director, it was

Resolved, That the board of directors, as at present composed, under the power given to them by the provisions of the by-laws, do now proceed to the election of twelve additional directors; one-third thereof—to wit, four directors—for the unexpired portion of the term of one year; one-third thereof—to wit, four directors—for the unexpired portion of the term of two years, and one-third thereof—to wit, four directors—for the unexpired portion of the term of three years.

A ballot having been taken, the following persons, all of whom are stockholders of the company, were duly elected directors of the company for the terms hereinafter specified, namely:

First class. To hold office for the unexpired portion of the term of the directors of the first class (being one year): James J. Hill, George F. Baker, George W. Perkins, Daniel S. Lamont.

Second class. To hold office for the unexpired portion of the term of the directors of the second class (being two years): Samuel Thorne, Jacob H. Schiff, James Stillman, W. P. Clough.

Third class. To hold office for the unexpired portion of the term of the directors of the third class (being three years): J. S. Kennedy, D. Willis James, E. T. Nichols, Robert Bacon.

Upon motion, the meeting adjourned to reconvene at 31 Nassau street, in the city of New York, at two o'clock this afternoon.

—— ——, Secretary.

380 Northern Securities Company.

Directors' Second Meeting—Adjournment.

NOVEMBER 14, 1901.

A meeting of the board of directors of the Northern Securities Company was held at 31 Nassau street, in the city of New York,

this 14th day of November, 1901, at two o'clock p. m., pursuant to adjournment.

The roll being called the following directors answered to their names: Geo. F. Baker, Jr., Abram M. Hyatt, Richard Trimble, James J. Hill, George F. Baker, George W. Perkins, D. S. Lamont, James Stillman, W. P. Clough, John S. Kennedy and E. T. Nichols.

The president occupied the chair.

The minutes of the first meeting of the board of directors and of the adjournment thereof, held on November 13, 1901, and of the second meeting, held on Novemer 14, 1901, were read and approved.

Mr. George F. Baker, Jr., tendered his resignation as director and his resignation was accepted.

On motion, duly made and seconded, it was

Resolved, To proceed to the election of a director of the first class to fill the vacancy caused by the resignation of Mr. Baker.

Mr. N. Terhune having been nominated, and no other nominations being made, a vote was taken, and, all the directors present having cast their votes in favor of his election, Mr. Terhune was duly elected director of the first class to fill the vacancy caused by the resignation of Mr. Baker.

Mr. Richard Trimble tendered his resignation as director and his resignation was accepted.

On motion, duly made and seconded, it was

Resolved, To proceed to the election of a director of the third class to fill the vacancy caused by the resignation of Mr. Trimble.

Mr. E. H. Harriman having been nominated, and no other nominations being made, a vote was taken, and, all the directors present having cast their votes in favor of his election, Mr. Harriman was duly elected a director of the third class to fill the vacancy caused by the resignation of Mr. Trimble.

381 Mr. Terhune and Mr. Harriman then appeared and accepted their election as directors, and took their seats in the board.

Mr. George F. Baker, Jr., tendered his resignation as treasurer, and on motion his resignation was accepted.

Mr. E. T. Nichols was thereupon nominated for treasurer, and, no other nominations being made, a vote was taken, and, all the directors present having cast their ballots in favor of his election, Mr. Nichols was elected treasurer of the company.

Mr. Abram M. Hyatt then presented his resignation as president of the company, to take effect upon the election of his successor.

Upon motion, duly seconded, and by the affirmative vote of all present, it was

Resolved, That the resignation of Mr. Hyatt as president of this company be accepted, and that the board proceed to the election of a president to fill the vacancy caused by the resignation of Mr. Hyatt.

Mr. James J. Hill was nominated for president, and there being

no other nominations, a ballot was taken, and Mr. Hill was duly elected president of this company, to fill the vacancy caused by the resignation of Mr. Abram M. Hyatt.

Mr. Abram M. Hyatt tendered his resignation as a director, and his resignation was accepted.

On motion, duly made and seconded, it was

Resolved, To proceed to the election of a director of the second class, to fill the vacancy caused by the resignation of Mr. Hyatt.

Mr. George C. Clark having been nominated, and no other nominations being made, a vote was taken, and, all the directors present having cast their votes in favor of his election, Mr. Clark was duly elected a director of the second class to fill the vacancy caused by the resignation of Mr. Hyatt.

Mr. Clark then appeared, accepted his election as director, and took his seat in the board.

Mr. Richard Trimble thereupon tendered his resignation as secretary of the company to take effect after the close of this meeting, and such resignation was accepted.

Mr. E. T. Nichols was nominated for secretary, and, no other nominations being made, a vote was taken, and, all the directors present having cast their ballots in favor of his election, Mr. Nichols was duly elected secretary of the company, the election to take effect after the close of this meeting. Mr. Nichols thereupon took the oath prescribed by law.

382 Upon motion, duly seconded, and by the affirmative vote of all present, it was resolved that the board proceed to the election of a first, a second, a third and a fourth vice-president of the company for the ensuing year.

Mr. John S. Kennedy was nominated for first vice-president and, there being no other nomination, a ballot was taken and Mr. Kennedy was unanimously elected first vice-president of this company.

Mr. George F. Baker was nominated for second vice-president and, there being no other nomination, a ballot was taken and Mr. Baker was unanimously elected second vice-president of this company.

Mr. D. Willis James was nominated for third vice-president and, there being no other nomination, a ballot was taken and Mr. James was unanimously elected third vice-president of this company.

Mr. William P. Clough was nominated for fourth vice-president and, there being no other nomination, a ballot was taken and Mr. Clough was unanimously elected fourth vice-president of this company.

Mr. W. P. Clough was appointed general counsel of the company.

Upon motion, duly seconded, and upon the affirmative vote of all present, it was

Resolved, That the board do now proceed to the election of the members of the executive committee, to be composed of the presi-

dent, *ex-officio*, and five directors. Directors Kennedy, Baker, James, Harriman, and Clough were nominated as members of said committee. There being no other nominations, a ballot was taken and Directors Kennedy, Baker, James, Harriman, and Clough were unanimously elected members of said committee.

The meeting thereupon adjourned until 2:30 o'clock p. m. of November 15th, A. D. 1901, at the offices on the ninth floor of the building Nos. 27–29 Pine street, in New York city.

—— ——, Secretary.

EXHIBIT No. 2.

The directors of the Northern Securities Company met at No 27 Pine street, New York city, on the 15th of November, 1901, at 2:30 p. m., pursuant to adjournment, of which adjournment written notice had been sent to all directors.

383 Present: Messrs. James J. Hill, George F. Baker, Daniel S. Lamont, N. Terhune, George W. Perkins, W. P. Clough, George C. Clark, John S. Kennedy, D. Willis James and E. T. Nichols.

The president occupied the chair.

The minutes of the adjournment of the directors' second meeting, held at 31 Nassau street, in the city of New York, at 2 o'clock p. m. on November 14th, 1901, were then read and approved.

Upon motion, duly made and seconded, it was unanimously resolved, that in case of absence or disability of the president, his duties and authority shall be exercised by the respective vice-presidents in the order of their numbers, beginning with the first.

The president stated that he now had an opportunity of acquiring $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock, of the Northern Pacific Railway Company, at an aggregate price of $91,407,500, payable, as to $82,491,871, in the fully paid-up and non-assessable shares of this company at par, and, as to the remaining $8,915,629, in cash.

On motion, and by affirmative vote of all the directors present, it was

Resolved, That the president be, and hereby he is, authorized in behalf of this company, to purchase said stock—namely, $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, at an aggregate price of $91,407,500, payable as to $82,491,871 thereof in the fully paid-up and non-assessable shares of the capital stock of this company at par, and as to $8,915,629 in cash; and that the officers of this company be, and hereby they are, authorized to issue fully paid-up and non-assessable shares of stock of this company to the amount of $82,491,871, and to pay $8,915,629 in cash, in consideration of such $37,023,000 of the common stock and $41,085,000 of the preferred stock of the Northern Pacific Railway Company.

Resolved, That the president be, and hereby he is, authorized at

any time to retire at par, for cash, any and all preferred stock of the Northern Pacific Railway Company that may be acquired by this company, and in case such retirement shall be effected prior to January 1, 1902, to allow interest up to January 1, 1902, at the rate of four per cent. per annum, on the sum receivable for such preferred stock.

Resolved, That the president be, and hereby he is, authorized in behalf of this company to purchase at their par value
384 an amount of the convertible certificates of the Northern Pacific Railway Company, to be issued pursuant to the resolutions of the board of directors of the Northern Pacific Railway Company passed November 13, 1901, equal to seventy-five eightieths of the par amount of any and all common stock of the Northern Pacific Railway Company that shall have been acquired by this company.

Resolved, That the president be, and hereby he is, authorized, in case of the purchase by this company of any of the convertible certificates of the Northern Pacific Railway Company, to convert the same into common stock of the Northern Pacific Railway Company whenever such conversion may be effected.

Resolved, That the president be, and hereby he is, authorized to borrow, on such terms as he may arrange, any moneys required for the purpose of carrying out the foregoing resolutions, and to make all financial arrangements, and to do all acts and things, which he may deem needful in the premises.

The meeting thereupon, on motion duly made and seconded, adjourned until 2 o'clock p. m. of Tuesday, November 19th, 1901, at the office on the ninth floor of the building No. 27–29 Pine street, New York city.

—— ——, Secretary.

EXHIBIT No. 1.

The directors of the Northern Securities Company met at 27 Pine street, New York, on Tuesday, November 19th, 1901, at two o'clock p. m., pursuant to adjournment, of which adjournment written notice had been sent to all directors.

Present: Messrs. George F. Baker, George C. Clark, W. P. Clough, E. H. Harriman, James J. Hill, D. Willis James, John S. Kennedy, Daniel S. Lamont, E. T. Nichols, George W. Perkins, J. H. Schiff, James Stillman, N. Terhune and Samuel Thorne.

President Hill took the chair.

The minutes of the directors' adjourned meeting held at 27 Pine street, New York, on the 15th November, were read, and on motion, duly seconded, were approved.

A form for the stock certificate of the company was presented, and on motion, duly seconded, was referred to the executive committee, with power.

385 The by-laws of the company were presented and read, and on motion, duly seconded, it was

Resolved, That the by-laws, as the same appear in the minutes, be, and they hereby are, approved and confirmed.

On motion, duly seconded, it was

Resolved, That the by-laws be amended, and are hereby amended and supplemented so as to provide for the appointment by the board, or by the executive committee of two (2) or more additional vice-presidents and two (2) or more additional assistant treasurers, for the sole purpose of signing, on behalf of this company, and if found necessary or desirable, of affixing this company's corporate seal, to this company's stock certificates; said officers to be under the direction, and their term of office to continue, during the pleasure of the president.

Resolved, Further, that the acts of such additional vice-presidents and assistant treasurers, in the signature and sealing of the said stock certificates, shall be deemed the act of this company as fully, and with like effect, as if the same were done by the president and treasurer of this company.

On motion, duly seconded, it was

Resolved, That the Manhattan Trust Company of New York be, and is hereby, appointed registrar of transfers of the stock of this company.

On motion, duly seconded, it was

Resolved, That Mr. Nicholas, Mr. Terhune and Mr. E. A. Bernholz be, and they hereby are, appointed transfer agents of the stock of this company.

On motion, duly seconded, the meeting adjourned, subject to the call of the chair.

————, Secretary.

Minutes of a special meeting of the board of directors of the Northern Securities Company, held at its office, Nos. 27–29 Pine street, New York city, at 11 o'clock a. m., November 29th, 1901. Said meeting was held in pursuance of a call of the president, a written agreement of directors, and a notice to Director Robert Bacon and his acceptance of such notice, copies of which appear below:

"To the directors of the Northern Securities Company:

"A special meeting of the board of directors of said company is hereby called, to meet at its offices, Nos. 27–29 Pine street, New York city, at 11 o'clock a. m., on November 29, 1901, for the pur-
386 pose of considering the approval of the rules of procedure of the executive committee, and such other business as may come before the meeting.

"Dated November 25, 1901.

"JAS. J. HILL, President.

"We, the undersigned, directors of the Northern Securities Company, hereby waive notice of the meeting of the directors, to be held

at Nos. 27–29 Pine street, in the city of New York, at 11 a. m., November 29, 1901, and hereby assent that such meeting may be held at said time and place, without further notice.

"Dated November 25, 1901.

"JAS. J. HILL.
"JACOB H. SCHIFF.
"DANIEL S. LAMONT.
"GEO. W. PERKINS.
"GEO. C. CLARK.
"E. H. HARRIMAN.
"SAM'L. THORNE.
"JAS. STILLMAN.
"D. WILLIS JAMES.
"GEO. F. BAKER.
"JOHN S. KENNEDY.
"W. P. CLOUGH.
"EDW'D. T. NICHOLS.
"N. TERHUNE."

To Robert Bacon, director of Northern Securities Company:

A special meeting of the board of directors of said company has been called by the president, to be held at its offices, Nos. 27–29 Pine street, New York city, at 11 o'clock a. m., November 29th, 1901, for the purpose of considering the approval of the rules of procedure of the executive committee, and such other business as may come before the meeting. Please wire accepting notice.

Dated November 25th, 1901.

E. T. NICHOLS, Secretary.

387 Nov. 28, 1901.

To Nicholas Morgan, N. Y.:

Received yesterday and hereby accept notice special meeting your letter dated lurdan.

ROBERT BACON.

Director Robert Bacon having been out of the city when such notice was given, the same was sent to him by the secretary of the company by telegraph, and his acceptance of notice, as appearing above, was sent by him by telegraph.

The following directors were present at the meeting and participated in the proceedings thereof:

Geo. F. Baker.
Geo. C. Clark.
W. P. Clough.
Jas. J. Hill.
D. Willis James.
John S. Kennedy.
Daniel S. Lamont.

Edw'd T. Nichols.
Geo. W. Perkins.
Jacob H. Schiff.
N. Terhune.
Sam'l Thorne.

Upon the request of the president, the secretary read the minutes of all the meetings of the board of directors which had been held previously to this meeting; whereupon it was, by the affirmative votes of all the directors present,

Resolved, That all the acts done and resolutions taken by the board of directors at the several meetings prior to the present be, and the same are, in all things approved, ratified and confirmed.

The secretary then read the minutes of the proceedings of the executive committee held on November 27th, 1901, which minutes were as follows:

Northern Securities Company.

Minutes of the first meeting of the executive committee of the Northern Securities Company, held at its offices in New York city at 1:30 p. m. on November 27th, 1901, in pursuance of an agreement of the members of the committee waiving notice of the meeting of which the following is a copy:

388 "Northern Securities Company.

"The subscribers, members of the executive committee of the said company, hereby agree to hold a meeting of said committee, for organization and for the transaction of such other business as may come before the committee, at the offices of the company, Nos. 27–29 Pine street, New York city, at 1:30 p. m. on November 27, 1901.

"Dated November 25, 1901.

"JAS. J. HILL.
"E. H. HARRIMAN.
"D. WILLIS JAMES.
"GEO. F. BAKER.
"JOHN S. KENNEDY.
"W. P. CLOUGH.

All the members of the committee were present and participated. On motion, the following rules regulating the procedure of the committee were unanimously adopted:

Northern Securities Company.

Rules of Procedure of the Executive Committee.

Rule I.

Meetings.

Meetings of the executive committee shall be held whenever called, in writing, by the chairman or by any two other members of the committee, at the offices of the company in the city of New York, or at the offices of the company in the State of New Jersey, the place of meeting to be stated in the call.

The secretary of the committee shall give notice of each meeting to each member of the committee by delivery of such notice to the member personally, or by leaving the same for him at his usual place of business, on a business day previous to that fixed for the meeting; but such notice may be waived by any member of the committee.

At any meeting at which every member of the committee shall be present, even though without any notice, any business may be transacted.

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Rule II.

Officers.

The president of the company, *ex-officio*, and, in his absence, one of the members, in the order in which their names appear upon the list voted for by the directors, at their election, shall act as chairman of the committee.

The secretary of the company, and, in his absence, one of the assistant secretaries, *ex-officio*, shall be secretary of the committee, and, as such, shall keep accurate minutes of the proceedings of the committee.

Rule III.

At all meetings of the board of directors of the company, the secretary of the committee shall lay before the board, for its approval or disapproval, the minutes of meetings of the executive committee held in the previous interval between meetings of the board.

The secretary then exhibited to the committee the form of the company's permanent stock certificate, which was as follows:

Authorized Capital Stock, $400,000,000.

No. —. — Shares.

Northern Securities Company.

Incorporated and Registered under the Laws of the State of New Jersey.

This certifies that —— —— is the registered holder of —— shares of the capital stock of the Northern Securities Company of one hundred dollars each, transferable only on the books of the company by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate.

This certificate shall not become valid until countersigned by the transfer agent and also by the registrar of transfers.

390 In testimony whereof, the said company has caused this certificate to be signed by its president and treasurer this — day of ——, A. D. 190–.

—— ——, President.

—— ——, Treasurer.

Countersigned this — day of ——, A. D. 190–.

—— ——,
Transfer Agent.

Countersigned and registered this — day of ——, A. D. 190–.
MANHATTAN TRUST COMPANY,
Registrar of Transfers,
By —— ——, Secretary.

Shares, $100 each.

On motion the said form was unanimously approved.

The secretary of the company reported to the committee that he had obtained bids and models for the stock certificate from the American Bank Note Company and the International Bank Note Company, and had entered into a contract with the International Bank Note Company, their bid being the lowest, to engrave the plates for four denominations of stock certificates for $450, and to furnish stock certificates at the rate of $35 per book of 500 certificates, on the condition that the work shall be approved by this company and be satisfactory to the New York stock exchange. On motion, duly seconded, the action of the secretary in making this contract was approved.

On motion, duly seconded, the meeting adjourned.

—— ——, Secretary.

391 On motion, the acts and resolutions of the executive committee at the said meeting were, by the affirmative vote of all the directors present, approved and confirmed.

On motion, the meeting then adjourned to 3 p. m. on Tuesday, December 3d, at the company's said offices.

——— ———, Secretary.

EXHIBIT No. 3.

Northern Securities Directors, 22d January, 1903.

NEW YORK, January 22, 1903.

A meeting of the board of directors of the Northern Securities Company was held at the office of the company, No. 26 Liberty street, New York, N. Y., at 2.30 p. m., this day, pursuant to call.

Present: Messrs. Bacon, Baker, Clark, Clough, Harriman, Hill, James, Kennedy, Nichols, Perkins, Schiff, Stillman, Terhune and Thorne.

The president took the chair.

The secretary read the minutes of the meeting of the board of directors held December 9, 1902, which on motion duly seconded, were approved.

The secretary reported that no meeting of the executive committee had been held since the last meeting of the board of directors.

The secretary then read and placed before the board, for its information, the balance sheet of the company as at December 31, 1902.

The following correspondence between Mr. James J. Hill and this company was then read:

"Great Northern Railway Company, 32 Nassau street.

NEW YORK, September 10, 1902.

The Northern Securities Company, New York city.

DEAR SIRS: Having discussed with some of your directors the advisability of the issuance of additional stock and the sale
392 thereof, and after that discussion such issuance and sale having been deemed advisable, I hereby agree to lend to you at any time to January 1st, 1903, up to 75,000 shares stock of the Northern Securities Company for the purpose of making deliveries on account of such sales of said stock. Should such issuance and sale not be formally approved by your directors, or executive committee, I agree to accept, in lieu of the return to me of such stock as you may borrow from me in terms of this letter, the proceeds that may be derived by you from the sale thereof, with interest on such proceeds from the date of their receipt by you to the date of their payment to me with interest at five per centum per annum.

It is understood that while any of said stock remains in your hands you will account to me and pay me any dividends that may

be paid thereon and turn over to me any privileges that may accrue thereon.

It is understood and agreed that all the stock you may borrow from me on this agreement shall be returned to me or its proceeds be paid over to me as above provided, on or before February 1st, 1903.

Your acceptance of the terms of this letter will constitute a contract between us.

Yours very truly,

(Signed) JAS. J. HILL."

"Northern Securities Company, 26 Liberty street.

NEW YORK, September 10, 1902.

James J. Hill, Esq., 32 Nassau street, New York, N. Y.

DEAR SIR: We beg to acknowledge the receipt of your letter of September 10, 1902, agreeing to lend to us, on certain terms, up to 75,000 shares of stock of the Northern Securities Company.

We accept all the stipulations of your letter, and in the event of our borrowing from you any part of the 75,000 shares of said stock, we agree that such stock shall be subject to the terms of said letter.

Yours very truly,

(Signed) W. P. CLOUGH,
4th Vice Pres't.

(Signed) EDW. T. NICHOLS,
Secretary."

393 The president then explained that, in accordance with the agreement embodied in this correspondence, the company had borrowed 62,000 shares of the Northern Securities Company stock, and that of said stock the officers of the company had sold 59,346 shares in the open market at prices averaging nearly 112 %, and applied the proceeds to extinguishing the indebtedness of the company.

On motion, duly seconded, it was

Resolved, That the contract, dated Sept. 10, 1902, signed by the officers of this company, on its behalf, with James J. Hill, by which Mr. Hill promised to lend to the company shares of its stock, up to 75,000 in the aggregate, in order to assist the company in procuring funds for repayment of loans, by sale of its shares in the open market, and also the sales of said borrowed stock, in said market, amounting to 59,346 shares, be, and the same are hereby, in all things approved, ratified, and confirmed.

Resolved, further, That the officers of this company be, and they are hereby, empowered and directed to do all acts, and to execute all instruments, for and on behalf of this company, necessary or proper for carrying into effect the provisions of said contract, including the issuance to Mr. Hill of 59,346 shares of the stock of this company to replace the said shares so sold.

EXHIBIT 4.

Know all men by these presents, that Edward H. Harriman and Winslow S. Pierce of —— do hereby appoint James J. Hill, or in his absence, Edward T. Nichols, or in the absence of both —— —— to be — substitute and proxy for — and in — name and in — behalf, to vote at the election of directors of Northern Securities Company, or on any other business relating to said company, at the annual meeting to be held in the city of Hoboken, N. J., on the 10th day of November, 1902, or at any postponement or adjournment thereof, as fully as we might or could if personally present, and we hereby revoke any other proxy heretofore given by us.

In witness whereof, we have hereunto set our hands this 2d day of October, 1902.

(Signed) EDWARD H. HARRIMAN.
(Signed) WINSLOW S. PIERCE.

Witness present:
(Signed) ALEX. MILLAR.

394 EXHIBIT 5.

Know all men by these presents, that —— —— of —— do hereby appoint James J. Hill, or in his absence, Edward T. Nichols, or in the absence of both, —— —— to be — substitute and proxy for — and in — name and in — behalf, to vote at the election of directors of Northern Securities Company, or on any other businass relating to said company, at the annual meeting to be held in the city of Hoboken, N. J., on the 9th day of November, 1903, or at any postponement or adjournment thereof, as fully as — might or could if personally present, and — hereby revoke any other proxy heretofore given by —.

In witness whereof, we have hereunto set our hands this 13th day of Oct., 1903.

(Signed) E. H. HARRIMAN.
(Signed) WINSLOW S. PIERCE.

Witness- present:
(Signed) ALEX. MILLAR.
(Signed) JOS. H. ALLEN.

395 In the Circuit Court of the United States for the District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, Oregon Short Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
v.
NORTHERN SECURITIES COMPANY and NORTHERN Pacific Railway Company, Defendants.
} In Equity.

Opinion.

(Filed July 15, 1904.)

Application has been made on bill, affidavits and exhibits, for a preliminary injunction in a suit brought by Edward H. Harriman, Winslow S. Pierce, the Oregon Short Line Railroad Company, and The Equitable Trust Company of New York against the Northern Securities Company and the Northern Pacific Railway Company. the present controversy grows out of a situation created by the final decree of the circuit court of the United States for the district of Minnesota in United States *v.* Northern Securities Co. *et al.*, 120 Fed. 721, and the affirmatory decree of the Supreme Court of the United States in the same case. 193 U. S. 197. That was a suit in equity brought by the United States against the Northern Securities Company, the Northern Pacific Railway Company, the Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel S. Lamont. Its object was to enforce the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the anti-trust act. 26 Stat. 209. Section 1 declares illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations," and provides that "every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of
396 a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court." Section 2 provides that "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor," punishable in like manner and to the like extent as offences under the first section. Section 3 declares illegal "every contract, combination in form of

trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations," and declares that "every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor," punishable in like manner and to the like extent as offences under the preceding sections. Section 4 provides, among other things, that the several circuit courts of the United States shall have "jurisdiction to prevent and restrain violations of this act," and that proceedings under the act "may be by way of petition." The petition or bill of complaint in the Minnesota suit referred to set forth in substance, among other things, that the Northern Pacific Railway Company and the Great Northern Railway Company were common carriers of freight and passengers and, as such carriers, were engaged in trade and commerce among the several States of the United States and with foreign nations; that on and prior to November 13, 1901, the defendants, Hill, Clough, James and Kennedy, and certain other persons whose names were unknown to the complainant, thereinafter referred to as James J. Hill and his associate stockholders, owned or controlled a majority of the capital stock of the Great Northern Railway Company, and the defendants, Morgan, Bacon, Baker and Lamont, and certain other persons whose names were unknown to the complainant, thereinafter referred to as J. Pierpont Morgan and his associate stockholders, owned or controlled a majority of the capital stock of the Northern Pacific Railway Company; that these two railway companies at and prior to the doing of the acts thereinafter complained of, owned or controlled and operated two separate, independent, parallel and competing lines of railway, running east and west, forming the Northern
397 Pacific system and the Great Northern system, connecting the Great Lakes and the Mississippi river with Puget sound and the Pacific ocean; that Hill and his associate stockholders, and Morgan and his associate stockholders, acting for themselves as such stockholders and on behalf of the two railway companies respectively in which they owned or held a controlling interest, on and prior to November 13, 1901, entered into an unlawful combination and conspiracy "to effect a virtual consolidation of the Northern Pacific and Great Northern systems, and to place restraint upon all competitive interstate and foreign trade or commerce carried on by them, and to monopolize or attempt to monopolize the same, and to suppress the competition theretofore existing between said railway systems in said interstate and foreign trade or commerce," through the instrumentality of a holding company to be created under the laws of New Jersey and to be called the Northern Securities Company, with a capital stock of $400,000,000, to which, in exchange for its own cap-

ital stock upon a certain basis and at a certain rate was to be transferred the capital stock or a controlling interest in the capital stock of each of the two railway companies, with power in the holding corporation to vote such stock and act as the owner thereof, and do whatever it might deem necessary to aid in any manner such railway companies or enhance the value of their stock; that thus the individual stockholders of the two competing railway companies were to be eliminated, and the Northern Securities Company substituted, as a single common stockholder, the interest of such individual stockholders in the property and franchises of the railway companies being converted into an interest in the property and franchises of the holding company; that in pursuance of such unlawful combination or conspiracy, and solely as an instrumentality for effecting the purposes thereof, the Northern Securities Company was, November 13, 1901, created under the laws of New Jersey, with an authorized capital stock of $400,000,000, and on or about the next following day was organized by the election of a board of directors and the selection of a president and other officers; that thereupon Hill and his associate stockholders assigned and transferred to that company a controlling interest in the capital stock of the Great Northern Railway Company, upon an agreed basis of exchange of $180 par value of the capital stock of the Northern Securities Company for each share of the capital stock of the Great Northern Railway Company, and Morgan and his associate stockholders assigned and
398 transferred to the Northern Securities Company a majority of the capital stock of the Northern Pacific Railway Company upon an agreed basis of exchange of $115 par value of the capital stock of the Northern Securities Company for each share of the capital stock of the Northern Pacific Railway Company; that in further pursuance of such unlawful combination or conspiracy the Northern Securities Company offered to the stockholders of the two railway companies to issue and exchange its capital stock for the capital stock of those companies upon the above mentioned basis of exchange, no other consideration being required; that in further pursuance of such unlawful combination or conspiracy the Northern Securities Company had acquired an additional amount of the stock of the two railway companies, issuing therefor its own stock upon the same basis of exchange, and was then holding as owner substantially all of the capital stock of the Northern Pacific Railway Company and a majority of or controlling interest in the capital stock of the Great Northern Railway Company, and was voting the same, collecting the dividends thereon, and in all respects acting as owner thereof in the organization, management and operation of such railway companies, and in receipt and control of their earnings; that thus a virtual consolidation under one ownership and source of control of the Great Northern and Northern Pacific Railway systems had been effected, a combination or conspiracy in restraint of the trade or commerce among the several States and with foreign nations, formerly carried on by the two railway companies independently

and in free competition one with the other, had been formed and was in operation, and the defendants were thereby attempting to monopolize, and had monopolized, such interstate and foreign trade and commerce, in violation of the act of Congress of July 2, 1890, above referred to; that no consideration whatever had existed, or would exist, for the above mentioned transfer of the stock of the railway companies by their stockholders to the Northern Securities Company other than the issue of the stock of the latter company to them in exchange therefor, for the purpose, in the manner and upon the basis above stated; that the Northern Securities Company was not organized in good faith to purchase and pay for the stock of the two railway companies, but solely to incorporate the pooling of the stock of said companies and to carry into effect such unlawful combination or conspiracy; that the Northern Securities Company was a mere depositary, custodian, holder and trustee of the stock of the railway companies, and its shares of stock were but beneficial certificates issued against such railway stock to designate the interest
399 of the holders in the pool; and that its subscribed capital was but $30,000, and its authorized capital stock of $400,000,000 was just sufficient, when all issued, to cover the exchange value of substantially the entire stock of the two railway companies, upon the basis and at the rate agreed upon, such exchange value being about $122,000,000 in excess of the combined capital stock of such railway companies taken at par. Answers and replications were duly filed, evidence was taken and such proceedings were thereafter had in the case that a decree was entered in the circuit court April 9, 1903, pursuant to the prayers of the petition or bill, but not including all the relief therein asked. In that decree it was declared that the defendants, in violation of the anti-trust act, had entered into a combination or conspiracy in restraint of trade and commerce among the several States, and that all of the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company "now claimed to be owned and held by the defendant, The Northern Securities Company, was acquired and is now held by it in virtue of such conbination or conspiracy in restraint of trade and commerce among the several States," and a perpetual injunction was granted restraining the Northern Securities Company from "acquiring or attempting to acquire further stock of either of the aforesaid railway companies," or "voting the aforesaid stock which it now holds or may acquire," or "attempting to vote it, at any meeting of the stockholders of either of the aforesaid railway companies" or "exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies or either of them by virtue of its holding such stock therein;" and restraining the Northern Pacific Railway Company and the Great Northern Railway Company respectively and collectively from "permitting the stock aforesaid to be voted by the Northern Securities Company, or in its behalf by its attorneys or agents at any corporate election for directors or officers of either of

the aforesaid railway companies," or "paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold," or "permitting or suffering the Northern Securities Company or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies." Immediately after the injunctive portion of the decree is the following clause:

"But nothing herein contained shall be construed as pro-
400 hibiting the Northern Securities Company from returning and transferring to the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said, the Northern Securities Company, may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignments of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies."

It may not be without significance, although it is unnecessary now to discuss the point, that the relief prayed in the petition or bill of the United States was in some particulars broader than that granted in the final decree. This decree was in all respects affirmed by the Supreme Court of the United States March 14, 1904, "with liberty to the circuit court to proceed in the execution of its decree as the circumstances may require." Mr. Justice Harlan in his opinion affirmatory of the decree of the court below, among other things, said:

"No valid objection can be made to the decree below, in form or in substance. * * * The circuit court has done only what the actual situation demanded. Its decree has done nothing more than to meet the requirements of the statute. It could not have done less without declaring its impotency in dealing with those who have violated the law. The decree, if executed, will destroy, not the property interests of the original stockholders of the constituent companies, but the power of the holding corporation as the instrument of an illegal combination of which it was the master spirit, to do that which, if done, would restrain interstate and international commerce. The exercise of that power being restrained, the object of Congress will be accomplished; left undisturbed, the act in question will be valueless for any practical purpose."

No opinion is now expressed or intimated as to the force or effect of the above utterance.

Thereafter the board of directors of the Northern Securities Company adopted March 22, 1904, certain preambles and resolutions,
401 reciting that the company "has acquired and now holds 1,537,594 shares in the capital stock of the Northern Pacific Railway Company; and 1,181,242 shares in the capital stock

of the Great Northern Railway Company," and "has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been enjoined from paying to this company any dividends upon any of the shares of such railway company held by this company," and that "there are now outstanding 3,951,000 shares of its own capital stock," and that it "desires and intends to comply with the decree in the said suit, fully and unreservedly, and without delay," and declaring it "necessary and desirable for this company so to reduce its present capital stock as will enable it, without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railroad companies held by it," and advisable that the fourth article of its certificate of incorporation should be so amended as to read as follows:

"Fourth. The capital stock of this company is hereby reduced to three million nine hundred fifty-four thousand dollars ($3,954,000), and shall hereafter be three million nine hundred and fifty-four thousand dollars ($3,954,000), divided into thirty-nine thousand five hundred and forty (39540) shares of one hundred dollars ($100) each. Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this company's stock surrendering to the company, for retirement, ninety-nine per centum of the shares held by him. Upon the surrender to this company, by any shareholder, of the entire number of shares, and parts of shares, of this company's stock, which he is hereby required to surender, this company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof for fractional shares of the stock of this company."

The resolutions also called for a meeting of the stockholders of the Northern Securities Company, to be held April 21, 1904, for the purpose of taking action upon the proposed alteration of its certificate of incorporation.

The bill in the present suit sets forth in substance, among other things, that the total authorized capital stock of the Northern
402 Pacific Railway Company in November, 1901, amounted to $155,000,000 par value, consisting of $75,000,000 par value of preferred stock and $80,000,000 par value of common stock; that such proceedings were had in November and December, 1901, that such preferred stock was converted into common stock, so as to make the entire issue of stock of the Northern Pacific Railway Company consist of common stock to the amount of $155,000,000 par value, and such is the authorized amount of its capital stock issued and now outstanding; that the authorized capital stock of the Great Northern Railway Company in November, 1901, was and still is about $125,000,000 par value, of which about $123,000,000 par value has been issued and was then and is now

outstanding; that the Northern Pacific and Great Northern Railway systems are substantially parallel and in a position to compete with each other in the transaction of interstate and foreign commerce carried on by them; that the Northern Securities Company, although incorporated and organized in form according to and nominally for objects authorized by the laws of New Jersey, in reality was incorporated and organized in pursuance of a combination in restraint of trade and commerce among the several States and for objects prohibited by the anti-trust act that prior to November 13, 1901, Hill, Morgan, Clough, James Kennedy, Bacon, Baker and Lamont, and their associates, owning or controlling a majority of the capital stock of the Great Northern Railway Company and a majority of the common capital stock of the Northern Pacific Railway Company, agreed to organize a holding company under the laws of New Jersey, and that such holding company should acquire and permanently hold a majority of the shares of the capital stock of those railway companies respectively and control the operation and management thereof in perpetuity, and that the then existing holders of such railway shares should deposit the same with such holding company and receive in lieu thereof share certificates of the holding company upon the basis of $180 par value of its stock for each share of the Great Northern Railway stock, and $115 par value of its stock for each share of the Northern Pacific Railway stock, and that the holding company should act as custodian, depositary or trustee of such railway shares on behalf of the existing shareholders of the two railway companies and their associates; that thereupon in pursuance of such agreement the Northern Securities Company was created and organized under the laws of New Jersey, for the object of acquiring and holding shares of the capital stock of other corporations, and with an authorized capital stock of
403 $400,000,000, divided into four million shares of the par value of $100 each, and forthwith agreed to acquire and hold the shares of stock of the two railway companies as custodian, depositary or trustee, and to issue in exchange therefor its own share certificates upon the above mentioned basis; that prior to April 9, 1903, about $176,822,900 par value of the stock of the Northern Securities Company was issued in exchange for about $153,759,400 par value of the stock of the Northern Pacific Railway Company, and about $211,057,600 par value of the stock of the former company was issued in exchange for about $118,124,200 par value of the stock of the Great Northern Railway Company, and about $7,522,000 par value of the stock of the Northern Securities Company was issued for cash used for the purchase of other property and for corporate purposes; that the Northern Securities Company caused the certificates for such railway shares to be transferred to and registered in its own name or the names of its agents and ever since has held and now holds the same so registered; that such issue of capital stock of the Northern Securities Company for the stock of the two railway companies was to the then existing holders of stock in such railway

companies in exchange for certificates for such railway stock and for the purpose of effectuating the above mentioned scheme or combination whereby the Northern Securities Company, holding a majority of the shares of stock of the two railway companies, would be enabled to control the operation and management of the same; that all the persons to whom stock of the Northern Securities Company was issued for shares of either of the railway companies or for cash had full knowledge of the purposes for which it was organized, and of the fact that a majority of the capital stock of each of the railway companies had been or was to be deposited with it as custodian or depositary in pursuance of the above mentioned agreement; that prior to the time of the incorporation and organization of the Northern Securities Company, the Oregon Short Line Railroad Company had acquired and at that time owned $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, represented by certificates issued to and registered in the names of the complainants Harriman and Pierce; that after the incorporation of the Northern Securities Company had been resolved upon Harriman, Pierce and the Oregon Short Line Railroad Company agreed with the promoters and incorporators of the former company to transfer to and deposit with it under the terms and conditions before stated, the shares of
404 the Northern Pacific Railway Company of the aggregate par value of $78,108,000 owned by the Oregon Short Line Railroad Company, and to receive in exchange therefor certificates of the Northern Securities Company representing an interest therein of $82,491,871 par value, and $8,915,629 in cash, and in pursuance of such agreement Harriman and Pierce, acting for the Oregon Short Line Railroad Company, did, on or about November 18, 1901, transfer and deliver to the Northern Securities Company certificates for $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, owned by the Oregon Short Line Railroad Company, and receiving in exchange therefor certificates of the Northern Securities Company representing an interest of $82,491,871 par value, and the above mentioned sum of $8,915,629 in cash; that Harriman and Pierce are now, and ever since November 18, 1901, have been, the registered owners and holders of the $82,491,871 par value of the shares of the Northern Securities Company, and such holding of stock is and at all times has been by them as trustees for the use and benefit of the Oregon Short Line Railroad Company, which is the beneficial owner thereof; that the $82,491,871 par value of the stock of the Northern Securities Company so standing in the names of Harriman and Pierce, was part of the original issue of stock by that company; that the above mentioned exchange was made by Harriman and Pierce and the Oregon Short Line Railroad Company in good faith and in the belief that the organization of the Northern Securities Company was not, and the acquisition and holding by it of the stock of the two railways as stated would not

be, in violation of any statute of the United States, and it was owing to such belief that the complainants did not, pending the final determination of the suit brought by the United States in Minnesota, take any steps or institute any proceedings for the protection of their rights in the premises; that the Oregon Short Line Railroad Company by indenture dated July 17, 1902, duly pledged $82,491,000 par value of the stock of the Northern Securities Company with the Equitable Trust Company of New York, as trustee, for an issue of bonds of that railroad company, of which bonds $82,491,000 face value have been certified and issued and are now outstanding; that the stock of the Northern Securities Company, so issued to Harriman and Pierce November 18, 1901, is still registered in their names and the certificates therefor duly endorsed are now in the actual custody of the Equitable Trust Company of New York as pledgee, and are avail-
405 able for tender, return or restoration to the Northern Securities Company; that at the time of such exchange, on or about November 18, 1901, it was agreed between Harriman and Pierce and the Northern Securities Company that the $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company should be converted into common stock of that railway company, and such preferred stock was subsequently, in or about December, 1901, converted by the Northern Securities Company into such common stock of the same par value; that certificates for $34,709,062 par value of such common stock registered in the name of the Northern Securities Company on the books of the railway company were substituted in lieu of the certificates for such preferred stock; that the Northern Securities Company caused such original common stock to be transferred to it upon the books of the railway company, and now holds within the jurisdiction of this court certificates registered in its name on the books of the railway company, namely the Northern Pacific Railway Company, for such common stock so originally received from Harriman and Pierce, and for the common stock into which such preferred stock was so converted and certificates substituted as above mentioned. The bill then sets forth in substance the proceedings in United States *v.* Northern Securities Company *et al.*, 120 Fed. 721, and the final decree therein of the circuit court and the decree of the Supreme Court of the United States on appeal. The bill further alleges in substance that the complainants were represented in that suit by the Northern Securities Company and the Northern Pacific Railway Company as well as by the individual defendants, Morgan, Bacon, Baker and Lamont, who were named as the representatives of original holders and owners of the stock of the Northern Pacific Railway Company acquired and held by the Northern Securities Company; that the effect of the decree of the circuit court as affirmed by the Supreme Court of the United States was to adjudge that the Northern Securities Company was not a purchaser or owner, but simply a custodian, of the shares of stock of the two railway companies acquired and held by it; that it acquired and held posses-

sion thereof in violation of the anti-trust act; that it acquired no title thereto and cannot transfer any rights in respect thereof; that the legal and equitable owners thereof were and are the several parties who originally exchanged the same for stock of the Northern Securities Company, or their assigns; that immediately upon the rendition of the decision of the Supreme Court of the United
406 States the Northern Securities Company, through its board of directors, determined fully and unreservedly to abandon and terminate the above mentioned combination and its holding of such railway stock, and to that end to reduce the capital stock of the company by ninety-nine per cent. thereof, or to $3,954,000 par value, and to distribute and divide the stock of the two railway companies held by it, *pro rata* among its own stockholders, but not to return and retransfer to the stockholders of those railway companies, respectively, or their assigns, any of the shares of stock in either of them which it, the Northern Securities Company, originally received from such stockholders in exchange for its own stock; that in order to consummate such purposes the board of directors of the Northern Securities Company on or about March 22, 1904, adopted the preambles and resolutions hereinbefore referred to; that thereupon a circular or notice was issued by and on behalf of that company to its stockholders, notifying them of a special meeting for the purpose of voting upon the proposition submitted by the directors in the resolutions adopted; that such meeting of stockholders was held April 21, 1904, and at it the stock of the Northern Securities Company was reduced ninety-nine per cent. by a vote of more than seventy-five per cent. in interest of its stockholders, and by a like vote the proposed plan of *pro rata* distribution was assented to, but the complainants then and there duly protested that such plan of distribution was illegal and in violation of their rights; that such plan is unauthorized by law, illegal and *ultra vires* the Northern Securities Company, in violation of the rights and equities of the complainants, and of the laws of the United States and of New Jersey; that such plan has never been assented to by the complainants and is not binding upon them; that the books and records of the Northern Securities Company show for what purpose or consideration each outstanding certificate of stock was originally issued, whether for cash or for stock of the Northern Pacific Railway Company or of the Great Northern Railway Company, and will disclose that a large part of the stock of the Northern Securities Company, issued originally in exchange for stock of those railway companies, is now held in the name or on behalf of original holders who exchanged the same for stock of the railway companies, and, wherever there have been transfers of certificates to third parties, the origin of each and every outstanding certificate of stock of the Northern Securities Company so transferred to third parties can be so traced and shown in and by such books and records that the assignees of the original holders can be identified and the stock

of either railway company originally exchanged by the
407 assignors can be delivered to such assignees in exchange for
their present holdings of stock of the Northern Securities Company; that the Northern Securities Company threatens and intends immediately to distribute the shares of stock of each of the two railway companies *pro rata*, among its, the Northern Securities Company's, stockholders in disregard of the rights of the complainants, and unless enjoined by this court from so doing, will forthwith make such distribution, whereby stock of the Northern Pacific Railway Company belonging to the complainants, and to which they are entitled will be lost by them, and they will thereby suffer injury which cannot be compensated in damages, in that the shares of stock of that railway company to which they are so entitled are registered on the books of the railway company in the name of the Northern Securities Company, and those railway company shares or any like amount of such shares cannot be purchased in any market or from any persons; that the proposed distribution *pro rata* in lieu of the return and restitution of the stock of the railway companies would involve a loss of annual income to the complainants amounting to over $1,000,000, the dividends at the rate now paid upon the stock of the Northern Pacific Railway Company to which they are entitled exceeding by more than $1,000,000 per annum the dividends upon the stock of the Great Northern Railway Company and Northern Pacific Railway Company which they would receive upon such *pro rata* distribution; that the value of the stock of the Northern Pacific Railway Company to which the complainants are entitled now exceeds and at all times mentioned in the bill exceeded by more than $10,000,000 the aggregate value of the *pro rata* share of the stock of the two railway companies which they would receive upon such *pro rata* distribution, which would be $32,070,612 par value of stock of the Northern Pacific Railway Company and $24,638,919 par value of stock of the Great Northern Railway Company, instead of $78,108,000 par value of stock of the former company; that the complainants are ready, able and willing, and offer, to return and deliver, or cause to be returned and delivered, and they tender, to the Northern Securities Company all the certificates for the shares of its capital stock so received by them, and such part of the above mentioned sum of $8,915,629 in cash, paid to them by or on behalf of that company, as may be just, or such further or other sum as the court shall fix, in exchange for and upon the return of the common stock of the Northern Pacific Railway Company, delivered and exchanged by them as above stated, and the common stock of such
railway company into which the preferred stock so exchanged
408 was converted, and they offer to bring into court such stock
of the Northern Securities Company and such moneys whenever the court shall direct, and in all respects to do equity and right in the premises; and that, after the return and restoration to the original depositors or their assigns of all the shares of stock of the railway companies, acquired and held by the Northern Securi-

ties Company, as above stated, there will remain in the treasury of that company assets and funds sufficient to pay and redeem all of the $7,522,000 par value of its stock issued for cash, or to fully compensate any holders thereof if compensation be adjudged. The complainants pray that it may be decreed that the proposed plan of distribution is illegal and in violation of their rights and equities, and that they are entitled to the return and transfer to them by the Northern Securities Company of the shares of common stock of the Northern Pacific Railway Company, which were so delivered by Harriman and Pierce, and the shares of common stock into which the preferred stock of that railway company delivered by them were converted, in exchange for the certificates of stock of the Northern Securities Company so issued to and now held by the complainants, and such sum in cash as may be just; that the Northern Securities Company may be ordered and directed to endorse the certificates now held by it for such stock of the Northern Pacific Railway Company to the Oregon Short Line Railroad Company, or in blank, and deliver the same to the Equitable Trust Company of New York in exchange for the stock of the Northern Securities Company now held by such trust company, to be subject to its rights and lien as trustee; that the Northern Securities Company be perpetually enjoined and restrained from parting with, disposing of, transferring, assigning or distributing any part of the stock of the Northern Pacific Railway Company received from Harriman and Pierce, or any common stock into which the preferred stock received from them may have been converted, or the certificates now representing the same or any part thereof, except to return the same to the complainants in exchange for its own stock issued as above stated and the cash now tendered by them; that the complainants have such other or further relief as shall be proper under the circumstances; and that the Northern Securities Company may be enjoined and restrained from parting with, disposing of, transferring, assigning or distributing the stock of the Northern Pacific Railway Company in question, or any part thereof, or any certificates now representing the same during the pendency of this suit.

409 The defense controverts material allegations in the bill, some of which embody averments of fact, and others averments of law. With respect to some of the alleged facts, important in their bearing upon the equities of the case, the affidavits and exhibits are conflicting on substantial points. On the face of the bill it is evident that the final decision necessarily will involve the consideration of grave, novel and delicate questions of law. On the presentation of their arguments for and against the awarding of a preliminary injunction counsel on both sides have with strong insistance urged, and with elaboration and signal ability discussed, a number of legal propositions, important and far-reaching in their scope, and by no means free from doubt. Whether or not a final decision will require a determination of all these propositions, the fact

remains that the eminent counsel advancing them have during a hearing of nearly three days pressed them with zeal and in manifest reliance upon their soundness and materiality. The briefs of argument and authorities, containing nearly 800 printed pages, and principally devoted to the discussion of the principles of law and equity deemed applicable to the case, fairly may be accepted as evidence that much may seriously be said on each side about the law, if not the facts, involved. The case not being ripe for a final decision, the present application is for a preliminary injunction. The granting or refusal of a preliminary injunction, whether mandatory or preventive, calls for the exercise of a sound judicial discretion in view of all the circumstances of the particular case. Regard should be had to the nature of the controversy, the object for which the injunction is sought, and the comparative hardship or convenience to the respective parties involved in the awarding or denial of the injunction. The legitimate object of a preliminary injunction, preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits, or the dismissal of the bill for want of jurisdiction or other sufficient cause. The injunction is merely provisional. It does not, in a legal sense, finally conclude the rights of parties, whatever may be its practical operation under exceptional circumstances. In a doubtful case, where the granting of the injunction would, on the assumption that the defendant ultimately will prevail, cause greater detriment to him than would, on the contrary assumption, be suffered by the complainant, through its refusal, the injunction usually should be denied. But where, in a doubtful case, the
410 denial of the injunction would, on the assumption that the complainant ultimately will prevail, result in greater detriment to him than would, on the contrary assumption, be sustained by the defendant through its allowance, the injunction usually should be granted. The balance of convenience or hardship ordinarily is a factor of controlling importance in cases of substantial doubt existing at the time of granting or refusing the preliminary injunction. Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to, or widely vary in degree, as between the showing of the complainant and that of the defendant, without necessarily being determinative of the propriety of allowing or denying the injunction. Where, for instance, the effect of the injunction would be disastrous to an established and legitimate business through its destruction or interruption in whole or in part, strong and convincing proof of right on the part of the complainant and of the urgency of his case is necessary to justify an exercise of the injunctive power. Where, however, the sole object for which an injunction is sought, is the preservation of a fund in controversy, or the maintenance of the *status quo*, until the question of right between the parties can be decided on final hearing, the injunction properly may be allowed, although there may be serious doubt of the ultimate success of the complainant. Its allowance in

the latter case is a provisional measure, of suspensive effect and in aid of such relief, if any, as may finally be decreed to the complainant. These views are supported by abundant authority to which, were it not for the importance of the case, I should refrain from adverting. In Russell *v.* Farley, 105 U. S. 433, 438, the court through Mr. Justice Bradley said:

"It is a settled rule of the court of chancery, in acting on applications for injunctions, to regard the comparative injury which would be sustained by the defendant, if an injunction were granted, and by the complainant, if it were refused. Kerr on Injunctions, 209, 210. And if the legal right is doubtful, either in point of law or of fact, the court is always reluctant to take a course which may result in material injury to either party."

In City of Newton *v.* Levis, 79 Fed. 715, the circuit court of appeals for the eighth circuit through Judge Sanborn said:

"The granting or withholding of a preliminary injunction rests in the sound judicial discretion of the court, and the only ques-
411 tion presented by this appeal is whether or not the court below erred in the exercise of that discretion, under the established legal principles which should have guided it. The propriety of its action must be considered from the standpoint of that court. * * * The controlling reason for the existence of the right to issue a preliminary injunction is that the court may thereby prevent such a change of the conditions and relations of persons and property during the litigation as may result in irremediable injury to some of the parties before their claims can be investigated and adjudicated. When the questions to be ultimately decided are serious and doubtful, the legal discretion of the judge in granting the writ should be influenced largely by the consideration that the injury to the moving party will be certain, great and irreparable if the motion is denied, while the inconvenience and loss to the opposing party will be inconsiderable, and may well be indemnified by a proper bond if the injunction is granted. A preliminary injunction maintaining the *status quo* may properly issue whenever the questions of law or fact to be ultimately determined in a suit are grave and difficult, and injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted. * * * The arguments and brief of counsel invite us to a consideration of the questions of law which must be finally determined upon a demurrer to the bill, or upon a final hearing of this case after answer. We have, however, found it unnecessary to decide these questions on this appeal, and we express no opinion upon them. They are of sufficient importance and difficulty to demand careful examination and deliberate consideration," &c.

In Glascott *v.* Lang, 3 Myl. & C. 451, 455, Lord Chancellor Cottenham said:

"In looking through the pleadings and the evidence, for the purpose of an injunction, it is not necessary that the court should find

a case which would entitle the plaintiff to relief at all events. It is quite sufficient if the court finds, upon the pleadings, and upon the evidence, a case which makes the transaction a proper subject of investigation in a court of equity."

412 In Hadden *v.* Dooley, 74 Fed. 429, 431, the circuit court of appeals for the second circuit through Judge Shipman said: "When the questions which naturally arise upon the transactions make them a proper subject for deliberate examination, if a stay of proceedings will not result in too great injury to the defendants, it is proper 'to preserve the existing state of things until the rights of the parties can be fairly and fully investigated and determined' by evidence and proofs which have the merit of accuracy."

In Great Western R. Co. *v.* Birmingham &c., 2 Phil. Ch. 597, Lord Chancellor Cottenham said:

"It is certain that the court will in many cases interfere and preserve property in *statu quo* during the pendency of a suit, in which the rights to it are to be decided, and *that* without expressing, and often without having the means of forming, any opinion as to such rights. It is true that no purchaser *pendente lite* would gain a title; but it would embarrass the original purchaser in his suit against the vendor which the court prevents by its injunction. * * * It is true that the court will not so interfere, if it thinks that there is no real question between the parties; but seeing that there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of. In order to support an injunction for such purpose, it is not necessary for the court to decide upon the merits in favor of the plaintiff. If, then, this bill states a substantial question between the parties, the title to the injunction may be good, although the title to the relief prayed may ultimately fail. Is, then, the case stated by the bill so clear in favor of the defendants, and so inadequate to support the relief prayed by the bill, as to justify the court in permitting it to be disposed of, and new titles or interests to be introduced, before any decision can be obtained upon the cas*t* so made?"

In Shrewsbury & Chester R. Co. *v.* Shrewsbury R. Co., 1 Sim. N. S. *410, *426, *427, *432, the vice-chancellor, Lord Cranworth, said:

"When the court is called on to interfere to preserve property *pendente lite*, there are, I apprehend, two points on which the
413 court must satisfy itself. First, it must satisfy itself, not that the plaintiff has, certainly, a right, but that he has a fair question to raise as to the existence of such a right. * * * Where it is made out that there is a point to be decided which the plaintiff *if* is fairly raising, still there is a further question, namely, whether interim interference, on a balance of convenience and inconvenience to the one party and to the other, is or is not expedient. Where the alternative *i*f interference or probable destruction of the property, there, of course, the court will be very ready to lend its immediate assistance, even at considerable risk that it

may be encroaching on what may eventually turn out to be a legal right of the defendant. But where, on the other hand, the only evil to result from non-interference is, that the plaintiff may, by the contracts or deeds of the defendant, be retarded or embarrassed in his litigation, there the court will be far more ready to listen to any suggestion of the defendant showing that interference during litigation will prejudice his rights. * * * Although I am perfectly satisfied of the authority of this court to issue an injunction, not merely to restrain parties from doing acts, but also from entering into contracts pending litigation that may embarrass the plaintiff in his suit, and that the court is entitled to do so whenever it sees there is a fair ground for litigation raised by the plaintiff, yet that right of the court must be guided by a discretion not to exercise it where it sees that on the balance of convenience and inconvenience between interim interference and non-interim interference the balance greatly preponderates in favor of the defendant and against the plaintiff."

In the above case a preliminary injunction was refused on the ground of the "enormous preponderance of inconvenience in granting the injunction over any possible inconvenience in refusing it." The doctrine of the foregoing cases is contained in many others from which there is no occasion to quote. Denver & R. G. R. Co. *v.* United States, 124 Fed. 156. Allison *v.* Corson, 88 Fed. 581. Buskirk *v.* King, 72 Fed. 22. Sanitary Reduction Works *v.* California Reduction Co., 94 Fed. 693. Southern Pac. Co. *v.* Earl, 82 Fed. 690. New Memphis Gas & Light Co. *v.* Memphis, 72 Fed. 952. Indianapolis Gas Co. *v.* Indianapolis, 82 Fed. 245. Georgia *v.* Braileford, 2 Dall. 402.

It does not appear, nor has it been claimed or intimated,
414 that the granting of the preliminary injunction asked for would interfere with the operation of the Northern Pacific Railway Company and the Great Northern Railway Company, or either of them, or otherwise prove detrimental to the interests of the public. It undoubtedly would, during the continuance in force of the injunction, preclude the stockholders of the Northern Securities Company, or a considerable proportion of them, from directly or indirectly receiving dividends on the stock or either of the railway companies, unless and by virtue of some voluntary and extrajudicial arrangement. But this court has power to require of the complainants as a condition precedent to the issuing of the injunction, a bond in such form and amount as fully to indemnify all persons, who may ultimately be found entitled to such dividends against all loss or damage resulting from the suspension of their payment. On the other hand, the denial of a preliminary injunction would, if the complainants should ultimately prevail, render barren their victory so far as relief in this suit is concerned. The stock of the two railway companies would be distributed *pro rata* among the stockholders of the Northern Securities Company in accordance with the plan of distribution adopted by the latter com-

pany. The complainants would receive, instead of stock of the Northern Pacific Railway Company of the par value of $71,732,062 claimed by them, stock of that company amounting at par to only $32,070,612, and stock of the Great Northern Railway Company of the par value of $24,638,919. The difference in the par value between the stock of the Northern Pacific Railway Company claimed by the complainants and the stock of that company which they would receive under the proposed plan is $39,661,450. If the complainants be sustained in their contention here made as to their ownership and right to recover stock, such right would not extend to stock of the Great Northern Railway Company, but only to stock of the Northern Pacific Railway Company. A *pro rata* distribution under the proposed plan of the $39,661,450 par value of stock of the latter company, included in the amount now sued for, among the stockholders of the Northern Securities Company, other than the complainants, would not only debar the latter from any relief to which they may be entitled under their present bill, but to a moral certainty entail upon them a burdensome multiplicity of suits attended with great labor and expense. It would also obviously be calculated to hinder, embarrass and probably or possibly defeat them in their effort to recover large quantities of such stock
415 from persons purchasing the same in good faith and for full consideration, directly or indirectly, from the stockholders of the Northern Securities Company participating in such *pro rata* distribution, through the creation of new equities on the part of such purchasers. In view of the character of the questions involved in this case it would be highly inequitable that the complainants should, in advance of any final decision on the merits, be put in such a position as to be precluded, either wholly or in large measure, from the realization and enjoyment of the fruits which should be theirs through the immediate result of a final decre- in the present case, should it ultimately be determined in their favor.

It appears from the bill, affidavits and exhibits that, aside from any question of right between the parties to one kind of stock in contradistinction to another, the real value in dispute is of great magnitude. For $37,023,000 par value of common stock and $41,085,000 par value of preferred stock of the Northern Pacific Railway Company turned over by Harriman and Pierce to the Northern Securities Company November 18, 1901, the latter company issued to them $82,491,871 par value of its stock and also paid them $8,915,629 in cash. All of the common and preferred stock so turned over by Harriman and Pierce, aggregating $78,108,000 par value was taken by the Northern Securities Company at an agreed real valution of $115 for each $100 at par without distinction between common and preferred stock. The plan of *pro rata* distribution of the Northern Securities Company contemplates the transfer and assignment to all stockholders of that company of both preferred stock of the Great Northern Railway Company and common stock of the Northern Pacific Railway Company, and in such man-

ner that each and every holder of stock of the Northern Securities Company will, on the basis of the surrender to it for cancellation of 99 per cent. of such stock, receive for each $100 per value of such surrendered stock $30.17 par value of the preferred stock of the Great Northern Railway Company and $39.27 par value of the common stock of the Northern Pacific Railway Company. Under the proposed plan the holders of the remaining one hundredths of the stock of the Northern Securities Company would also be entitled to share in the residue of property in the treasury of that company remaining after the reduction of its stock by 99 per cent. The complainants hold $82,491,871 par value of the stock of the Northern Securities Company, and, as before stated, would receive
$24,638,919 par value of the preferred stock of the Great
416 Northern Railway Company and $32,070,612 par value of the
common stock of the Northern Pacific Railway Company.
The present real or market value of the preferred stock of the former company is about, and is admitted to be, $170 for each $100 par value, while that of the common stock of the Northern Pacific Railway Company is $135 for each $100 par value. Under the proposed plan the real value which the complainants would receive in stock of the Great Northern Railway Company would be $41,886,162, and the real value which they would receive in stock of the Northern Pacific Railway Company would be $41,295,326, making a total of $83,181,488, aside from any interest they might have in any undisposed of residue of property remaining in the treasury of the Northern Securities Company. Reference will later be made to such undisposed of residue. It appears from the affidavits and exhibits that in November, 1901, the Northern Pacific Railway Company adopted a plan for the conversion of all its preferred stock into common stock; the preferred stock then amounting to $75,000,000 par value, and the common stock to $80,000,000 par value. Under this plan the Northern Securities Company, as the holder of $37,023,000 par value of the common stock became entitled to surrender preferred stock of the Northern Pacific Railway Company and receive therefor seventy-five eightieths of its par value in the new common stock. There is evidence furnished by the affidavits and exhibits that the Northern Securities Company exercised this right and received of such new common stock $34,709,062 at par. If such be the fact, the latter company thereupon became the holder of $71,732,062 par value of common stock, the real value of which at $135 for $100 par value is $96,838,283. The deduction from the $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company of the $37,023,000 par value of such stock, the surrender of which to that company for cancellation was necessary for the acquisition of the $34,709,062 of its new common stock, left a balance of $4,062,000 par value of its preferred stock. If this balance was sold or disposed of at par—and it may reasonably be inferred from the affidavits and exhibits that it was not sold or disposed of for less—its proceeds, $4,062,000 fairly may be treated as an offset

to the cash payment of $8,915,629, originally made by the Northern Securities Company to Harriman and Pierce. On this theory the balance of the $8,915,629 over the $4,062,000 amounting to $4,853,629, when deducted from $96,838,283, the present real value of the $71,732,062 par value of the common stock of the Northern Pacific Railway Company leaves a bal-
417 ance of $91,984,654. From this balance would be deducted $83,181,488 which the complainants would receive under the *pro rata* plan, leaving $8,803,166 in their favor, less the amount of their share of the above mentioned residue in the treasury of the Northern Securities Company and a just allowance of interest on the cash balance. The above mentioned sum of $8,915,629, paid by the Northern Securities Company to Harriman and Pierce November 18, 1901, had been loaned to that company by the firm of J. P. Morgan & Company. On or about January 1, 1902, $6,375,938 par value of the $41,085,000 par value of preferred stock of the Northern Pacific Railway Company original-y transferred by Harriman and Pierce to the Northern Securities Company, having previously been surrendered to the Northern Pacific Railway Company and retired, its proceeds, amounting to its par value, were paid by the Northern Securities Company to J. P. Morgan & Company in partial liquidation of the cash loan of $8,915,629 made by that firm to the latter company. The affidavits and exhibits furnish evidence of some weight that the above mentioned par value of $6,375,938 of preferred stock of the Northern Pacific Railway Company was deducted by the Northern Securities Company from the $41,085,000 par value of preferred stock of that railway company, thereby reducing the latter amount to $34,709,062 at par, and that the remaining preferred stock, namely, $34,709,062 par value was, through the instrumentality of convertible certificates issued by the Northern Pacific Railway Company converted into new company stock of equal par value. If such be the case, the claim of the complainants would extend to the $37,023,000 par value of the old common stock, and the $34,709,062 par value of the new common stock, aggregating $71,732,062 par value of common stock, having a real value of $96,838,283. The deduction from this amount of $2,539,691, representing the difference between the original cash payment of $8,915,629 and $6,375,938, proceeds of preferred stock retired, should be deducted from the total amount leaving a balance amounting in real value to $94,298,592. Deducting from this amount $83,181,488, which the complainants would receive under the proposed distribution, leaves $11,117,104 in their favor, less the amount of their share of the residue in the treasury of the Northern Securities Company after the proposed distribution. There should also be a further deduction of such sum by way of interest on cash received as above stated by Harriman and
418 Pierce from the Northern Securities Company as may be just. This item, however, would be of comparative insignificance

in its relation to the other values involved in the suit. In a journal of the Northern Securities Company is the following entry:

"1901, Nov'b'r 18th.

Investment Account No. 1—To Capital Stock a/c.

For 410,850 shs. N. P. pfd. stock bought from E. H. Harriman and Winslow S. Pierce for.....	$41,085,000
Less paid in cash as per entry in cash book this day.....	8,915,629
Balance paid in stock.....,	$32,169,371

Say 321,693 shs. & $71 scrip issued as fully paid up stock at par."

Whatever may be the merit of this entry as viewed from the standpoint of scientific bookkeeping, the words and figures "Balance paid in stock $32,169,371," are, when considered in connection with other exhibits and the affidavits, confusing and misleading in their bearing upon the conversion, whether directly or indirectly, of preferred stock of the Northern Pacific Railway Company originally turned over by Harriman and Pierce to the Northern Securities Company into new common stock of the former company. Any assumption that the above mentioned balance of $32,169,371 par value of preferred stock of the Northern Pacific Railway Company was not converted, either at par or on the seventy-five eightieths basis, into new common stock of that company, by the Northern Securities Company, appears irreconcilable with controlling evidence touching the conversion of preferred into common stock, furnished by the affidavits and exhibits considered as a whole. A fact, which on the present showing seems indisputable, is that the Northern Securities Company, in addition to the $37,023,000 par value of the common stock of the Northern Pacific Railway Company originally turned over to the former company by Harriman and Pierce, acquired through the instrumentality of convertible certificates issued by the railway company new, common stock of the par value of $34,709,062. It is unimportant, so far as the point under immediate discussion is concerned, whether that amount of new common stock was secured, on the one hand by a surrender to the railway company of $37,023,000 par value its pre-
419 ferred stock on the seventy-five eightieths basis, or, on the other, by a surrender to the railway company of its preferred stock of the par value of $34,709,062, for its new common stock of the same par value. It is not claimed or suggested that the balance of $32,169,371 par value of preferred stock, mentioned in the journal entry, was sold by the Northern Securities Company absolutely for cash and without intention on its part, directly or indirectly, to convert such balance of preferred stock into the new com-

mon stock of the Northern Pacific Railway Company. Any such contention would, on the present showing, be wholly inadmissible. The affidavits and exhibits fail to disclose, and counsel have not attempted to explain, how that balance of preferred stock was, or, on any basis or theory justified by the evidence, could have been, converted into $34,709,062 par value of the new common stock of the Northern Pacific Railway Company. Yet, if, notwithstanding the foregoing considerations, it be assumed that only $32,169,371 par value of the original $41,085,000 par value of preferred stock of that railway company, transferred by Harriman and Pierce to the Northern Securities Company was converted into the new common stock of the railway company of an equal par value, the old and new common stock would aggregate $69,192,371 par value or a real present value of $93,409,701. The deduction from the latter amount of the $83,181,488 which the complainants would receive under the proposed *pro rata* distribution would leave a balance of $10,228,213 of real value in their favor, less the amount of their participation in the residue of the property remaining in the treasury of the Northern Securities Company. Or, further, if it be assumed that the $32,169,371 par value of preferred stock of the Northern Pacific Railway Company was converted into new common stock of that company on the basis of seventy-five eightieths, it would represent $30,158,785 par value of new common stock, the real value of which is $40,714,360. This latter sum added to $49,981,050, representing the real value of $37,023,000 par value of the old common stock would aggregate $90,695,410, and the deduction from this sum of the $83,181,488 which the complainants would receive under the proposed distribution, would leave a balance of $7,513,922 of real value in their favor, less their share of the residue of the property in the treasury of the Northern Securities Company.

The stock of the Northern Securities Company outstanding April 21, 1904, and presumably now outstanding, is of the par value
420 of $395,400,000, divided into 3,954,000 shares of the par value of $100 each. That company now holds 1,537,594 shares of the stock of the Northern Pacific Railway Company and 1,181,242 shares of stock of the Great Northern Railway Company, of the par value of $100 each. The proposed *pro rata* plan of distribution contemplates the reduction of the total outstanding stock of the Northern Securities Company by 99 per cent. To accomplish this result the Northern Securities Company offers, on the surrender to it of that proportion of its stock, amounting at par to $391,446,000, to deliver or pay for each $100 par value thereof surrendered $39.27 par value of stock of the Northern Pacific Railway Company, and $30.17 par value of stock of the Great Northern Railway Company, and "proportional amounts thereof for fractional shares of the stock of this company" $39.27 on each $100 of $391,446,000 so closely approximates to the par value of the 1,537,594 shares of stock of the Northern Pacific Railway Company that for any practical purpose on the present application it may be considered equal to it. And

$30.17 on each $100 of $391,446,000 so closely approximates to the par value of the 1,181,242 shares of stock of the Great Northern Railway Company that for any such purpose it may be considered equal to it. Thus, the surrender of ninety-nine one hundredths of the outstanding stock of the Northern Securities Company would necessarily involve the transfer and alienation by it of practically all the stock of the Northern Pacific Railway Company and Great Northern Railway Company now held by it. Whatever of real value the remaining one hundredth of the par value of the outstanding stock of the Northern Securities Company, $3,954,000, might represent, would consist wholly, or practically wholly, of property other than stock of both or either of the two railway companies. It does not appear from the affidavits and exhibits what amount of property would remain in the treasury of the Northern Securities Company after the distribution of the railway stock referred to. Nor does it appear whether the company is or is not indebted, nor whether there are or are not other charges or expenses paramount to the claims of the holders of the remaining one hundredth of its stock. As between the complainants applying for a preliminary injunction, and the Northern Securities Company resisting the application partly on the ground that the real value in dispute is not sufficient to warrant an exercise of the injunctive power, the burden, of showing the amount of property in which the complainants would share under the proposed plan, clearly, in view of the fact that the company is chargeable with full knowledge of the character
421 amount and condition of its own property and finances, rested upon it. It must be presumed to have been able to make such a showing. Its failure so to do gives rise to an unfavorable inference. But even if it be assumed that the real value of the residue of the property would be $3,954,000, the par value of the remaining stock, the complainants would under the proposed plan, in the absence of any reduction or obliteration of the fund through possible indebtedness or other charges or expenses, receive as their share approximately $824,919. This sum, though a large amount, is but a small proportion of the real value which the complainants would receive, if entitled to recover. It is less than one twelfth of $11,117,104; less than one eleventh of $10,228,213; less than one ninth of $8,803,166; and less than one eighth of $7,513,822. It is unnecessary, and would be tedious, to discuss in this connection and on the present application the subject of interest, as at most it is a matter of comparative insignificance. In leaving the discussion of real values involved in this suit it should be borne in mind that the right of the complainants to recover, if it exists, extends to stock of the Northern Pacific Railway Company, amounting on the present showing to from $69,000,000 to $71,000,000 approximately at its par value, and to a much larger sum at its real value, and that they disclaim all right to the stock of the Great Northern Railway Company which the Northern Securities Company insists should be taken by them, instead of the larger amount of the stock

of the Northern Pacific Railway Company claimed by them. From this point of view there possibly may be some doubt of the pertinency of the foregoing discussion of balances of real values to the consideration of the propriety of granting or withholding the injunction. On this point no opinion is expressed. It was urged by the defense at the hearing that the granting of the relief sought by the complainants would be injurious to many stockholders of the Northern Securities Company, other than the complainants, who acquired their stock in good faith and for full consideration, for the reason that in many instances and to a large amount stock of that company had been so issued or transferred as to render it impossible to trace or identify the consideration of such issue or transfer. It appears that prior to April 9, 1903, stock of the Northern Securities Company of the par value of $7,522,000 was issued for cash used in the purchase of stock of the Great Northern Railway Company and other stocks held by the Northern Securities Company, and also that its stock to a large amount has been transferred from time to time among and is now held by a large number of persons.

422 The bill avers that those becoming stockholders of the Northern Securities Company, whether for shares of the Northern Pacific Railway Company or the Great Northern Railway Company or for cash, had full knowledge and information of the purposes for which the first named company was organized, and the affidavits are conflicting on the question whether or not the nature and amount of the consideration for the issue or transfer of stock of that company can be traced and identified on its books or otherwise. It is manifestly improper that these matters should be decided on the fragmentary and inconclusive evidence now before the court. They require deliberate investigation in the accustomed mode on evidence taken in due course and in the light of an examination of books and papers produced before a master. It should also be borne in mind that this court, as a court of equity, has power so to mold its decrees and impose such terms as may be necessary to protect the equities of persons who may be affected by its action.

Language justly applicable to the present case was employed by Judge Sanborn in Denver & R. G. R. Co. *v.* United States, 124 Fed. 156, 161, as follows:

"The case falls well within the established rule that a preliminary injunction maintaining the *status quo* may properly issue whenever the questions of law or of fact to be ultimately determined are grave and difficult, and injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small if it is granted."

An appeal does not lie from an interlocutory decree of this court denying a preliminary injunction. While this consideration is entitled to no weight where, on the application for an injunction, it clearly appears that the complainant cannot prevail on the final hearing, it is often of controlling importance where, on such appli-

cation, there is room for reasonable doubt as to the ultimate result. Under the circumstances, this court would not be justified in refusing the injunction sought. Such refusal would not be an exercise of sound judicial discretion. It would not only be improvident in the extreme, but betray peculiar insensibility to the fallibility of human judgment so often accentuated by differences of opinion in even the highest judicial tribunals.

An interlocutory decree for a preliminary injunction may be prepared and submitted.

July 15, 1904.

EDWARD G. BRADFORD, J.

423 Circuit Court of the United States, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

against

THE NORTHERN SECURITIES COMPANY and THE NORTHERN Pacific Railway Company, Defendants.

Decree for Injunction.

(Filed August 18, 1904.)

This cause came on to be heard at this term upon the motion of the complainants for a preliminary injunction and was argued by counsel and thereupon, upon consideration thereof, and of complainants' bill of complaint and exhibits thereto, and the several affidavits in support of said motion filed by the complainants and the several affidavits filed on behalf of the defendants in opposition to said motion, the court thereupon do order, adjudge and decree as follows:

That a writ of special injunction do issue out of and under the seal of this court, directed to the Northern Securities Company, restraining it, its directors, officers, agents and employees, until the final determination of the suit, or until further order of this court, from in any manner transferring, assigning, distributing or otherwise disposing of or parting with three hundred and seventy thousand, two hundred and thirty (370,230) shares of the common stock of the Northern Pacific Railway Company alleged in the bill to have been received by the said Northern Securities Company from the complainants Edward H. Harriman and Winslow S. Pierce on or about the 18th day of November, 1901, or any part thereof; and from transferring, assigning, distributing or otherwise disposing of or parting with three hundred and forty-seven thousand and ninety (347,090) shares of the common stock of the Northern Pacific Railway Company received by the said Northern Securities Company

from the Northern Pacific Railway Company on or about the
424 27th day of December, 1901; and from transferring, assigning, distributing or otherwise disposing of or parting with the certificates representing said stock, or any of them or any part thereof.

It is further ordered, that before the said writ of injunction issue, complainant Oregon Short Line Railroad Company shall file a bond with the clerk of this court in the penal sum of two million dollars, with such surety as the court shall approve, conditioned to indemnify all persons whom this court may ultimately find to have sustained loss or damage resulting from said injunction, if the same shall be found to have been improperly issued.

August 18, 1904.

EDWARD G. BRADFORD, J.

United States Circuit Court, District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,

vs.

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Bond.

(Filed August 18, 1904.)

Know all men by these presents:

That the Oregon Short Line Railroad Company, a corporation duly organized and existing under the laws of the State of Utah, as principal, and The United States Fidelity and Guaranty Company, a corporation duly organized and existing under the laws of the State of Maryland, having an office at Trenton, in the State of New Jersey, and having authority to transact business in said State, pursuant to an act of Congress, of August 13th,
425 1894, entitled: "An act relative to cognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon" as surety, are held and firmly bound unto the United States of America in the sum of two million dollars ($2,000,000), lawful money of the United States of America, for the payment of which, well and truly to be made, unto the United States of America, said Oregon Short Line Railroad Company and said The United States Fidelity and Guaranty Company bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Whereas, a suit is now pending in the United States circuit court for the district of New Jersey, wherein Edward H. Harriman,

Winslow S. Pierce, The Oregon Short Line Railroad Company and The Equitable Trust Company of New York, are complainants and The Northern Securities Company, a corporation duly organized and existing under the laws of the State of New Jersey, and The Northern Pacific Railway Company, a corporation duly organized and existing under the laws of the State of Wisconsin are defendants, in which a motion has been made by the complainants for a special writ of injunction *pendente lite;* and

Whereas, an order has been entered in said suit granting said motion, and directing that before the said writ of injunction issue, the complainant, The Oregon Short Line Railroad Company, shall file a bond with the clerfk of the United States circuit court for the district of New Jersey in the sum of two million dollars ($2,000,000);

Now, therefore, the condition of this obligation is such, that if the said Oregon Short Line Railroad Company shall indemnify the Northern Securities Company and all persons whom the United States circuit court for the district of New Jersey may ultimately find to have sustained loss or damage resulting from such writ of injunction, if the same shall be found to have been improperly issued, then the above obligation shall be void, but shall otherwise remain in full force and virtue.

In witness whereof, the said Oregon Short Line Railroad Company has caused these presents to be signed by its vice-president and attested by its assistant secretary, and its corporate seal to be hereto affixed, and the said The United States Fidelity and Guaranty Company has caused these presents to be signed by its man-
426 ager and attested by its attorney-in-fact, and its corporate seal to be hereto affixed this third day of August, one thousand nine hundred and four.

OREGON SHORT LINE RAILROAD COMPANY.
WM. D. CORMISH, Vice-President.

Attest:
JOS. HELLEN,
Ass't Secretary.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By SYLVESTER J. O'SULLIVAN, Manager.

[L. S.]

Attest:
CHAS. W. YOUNG,
Attorney-in-fact.

The foregoing bond is satisfactory as to form and substance and surety, to the defendant, Northern Securities Company.

JOHN W. GRIGGS,
Sol. for Defendant Northern Securities Company.

Aug. 17, 1904.

STATE OF NEW YORK, }
County of New York, } ss:

Before me personally came Sylvester J. O'Sullivan, known to me to be the manager of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Oregon Short Line Railroad Company as surety thereon, who being by me duly sworn, deposes and says that he resides in the city of New York, State of New York, that he is the manager of said The United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of Maryland; that said company has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Oregon Short Line Railroad Company is the corporate seal of said The United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as manager of said company; and that he is acquainted with Charles W. Young and knows him to be attorney in fact of said company; and that the signature of said Charles W. Young subscribed to said bond is the genuine handwriting of said Charles W. Young and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent;
427 and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars ($2,000,000).

SYLVESTER J. O'SULLIVAN, Manager.

Sworn to, acknowledged before me, and subscribed in my presence this 17th day of August, 1904.

EDWARD H. ROWLEY,
Notary Public, Kings Co.

Certificate filed in New York Co.

The within bond is approved as to form and sufficiency of surety

EDWARD G. BRADFORD, *J.*

August 18, 1904.

Affidavit.

CITY OF NEW YORK,
County of New York, State of New York, } ss:

Sylvester J. O'Sullivan, being by me duly sworn deposes and says that he is manager of the United States Fidelity and Guaranty Company, acting by power of attorney granted to him by the board

of directors of the said company; that he is familiar with the assets and liabilities of the said company, and that the assets of the said company exceed the liabilities of said company by more than two million dollars ($2,000,000.) as will more fully appear by the annexed statement, marked "Exhibit A." showing the assets and liabilities of the said company at the close of business June 30th, 1904, which said statement is hereto referred to and made a part hereof as if fully incorporated herein, and deponent further says that he knows of his own knowledge that the said statement is a true and correct summary of the assets and liabilities of the said company at the close of business June 30th, 1904.

SYLVESTER J. O'SULLIVAN.

Sworn to, acknowledged before me, and subscribed in my presence this 17th day of August, 1904.

EDWARD H. ROWLEY,
Notary Public, Kings Co.

Certificate filed in New York Co.

428 Statement.

The United States Fidelity and Guaranty Company—Home Office, Baltimore, Md.

At the Close of Business, June 30th, 1904.

Commenced Business, August 1st, 1896.

Assets.

Investments, stocks and bonds (market value)	$1,931,238.40
Cash on hand and in banks	405,590.02
Collateral loans	47,960.00
Loans secured by mortgages	19,650.00
Ground rents	49,000.00
Real estate	340,635.70
Mortgages and other collateral a/c salvage	4,000.00
Agents' balances, fidelity and surety, less commissions	259,171.68
Agents' balances, burglary, less commissions	78,991.97
Due for subscriptions, department guaranteed attorneys	28,600.80
Aduance a/c contracts, secured	122,211.56
Interest due and accrued	29,792.16
	$3,316,842.29

Liabilities.

Capital stock paid in cash	$1,700,000.00
Cash deposited as collateral	112,898.71
Surplus and reserve	1,503,943.58
	$3,316,842.29

JOHN R. BLAND, President.
GEORGE R. CALLIS, Secretary.

STATE OF MARYLAND, City of Baltimore, } ss:

On this 8th day of July, 1904, before me, A. D. Patrick, a notary public in and for the city and State aforesaid personally appeared John R. Bland and George R. Callis, president and secretary respectively, of the United States Fidelity and Guaranty Company, who, being by me severally duly sworn, did depose and say
429 that they are such officers of the said company, and that the above and foregoing is a full, true and correct statement of the assets and liabilities of the said company, as they appeared upon the books of the said company on the 30th day of June, A. D. 1904.

In witness whereof, I have hereunto set my hand and official seal, the day and year aforesaid.

[L. S.]

A. D. PATRICK,
Notary Public.

"Exhibit A."

Injunction.

(Filed August 22, 1904.)

UNITED STATES OF AMERICA, Third Circuit, District of New Jersey, } ss:

[L. S.] The President of the United States to the Northern Securities Company, Greeting:

Whereas, Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and the Equitable Trust Company of New York, lately exhibited their bill of complaint, in the circuit court of the United States, for the district of New Jersey, against you and The Northern Pacific Railway Company, defendants, praying to be relieved touching the matters therein complained of and especially that you be enjoined from transferring or disposing of certain preferred and common stock of the Northern Pacific Railway Company therein referred to,

We therefore, in consideration thereof, and also of the particular matters in the said bill set forth, do strictly command and enjoin you, the said The Northern Securities Company your directors, officers, agents and employees, until the final determination of the suit, or until further order of this court, from in any manner transferring, assigning, distributing or otherwise disposing of or parting with three hundred and seventy thousand two hundred and thirty (370,230) shares of the common stock of the Northern Pacific Railway Company alleged in the bill to have been received by the said Northern Securities Company from the complainants Edward
430 H. Harriman and Winslow S. Pierce on or about the 18th day of November, 1901, or any part thereof; and from transferring, assigning, distributing or otherwise disposing of or parting with three hundred and forty-seven thousand and ninety (347,090) shares of the common stock of the Northern Pacific Railway Company received by the said Northern Securities Company from the Northern Pacific Railway Company on or about the 27th day of December, 1901; and from transferring, assigning, distributing or otherwise disposing of or parting with the certificates representing said stock, or any of them or any part thereof.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Trenton, this nineteenth day of August, nineteen hundred and four.

S. D. OLIPHANT,
Clerk of Circuit Court.

Served the within injunction on the defendant, The Northern Securities Company at Hoboken, N. J., on the 19th day of August, 1904, by delivering to and leaving with George W. Butts, vice-president of the Hudson Trust Company, registered agent of the defendant company, personally, a copy thereof, and at the same time showing him this original and informing him of its contents.

THOMAS J. ALCOTT,
United States Marshal.

In the United States Circuit Court for the District of New Jersey.
In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Co., and The Equitable Trust Co. of New York, Complainants,

against

THE NORTHERN SECURITIES COMPANY and THE NORTHERN Pacific Railway Company, Respondents.

Assignment of Errors.

(Filed September 1, 1904.)

431 The Northern Securities Company, which is the only respondent which has been served with process or has appeared in this cause, files the following assignment of errors upon which it will rely upon its appeal from the interlocutory order made by this honorable court on the 18th day of August, 1904, granting an injunction *pendente lite* in said cause.

The respondent assigns in error upon this appeal the following, namely:—The circuit court erred in making said interlocutory order.

1st. In deciding that the said court had jurisdiction.

2nd. In deciding that a writ of special injunction should issue in accordance with the prayer of the bill of complaint directed to the Northern Securities Company and restraining said company, its directors, officers, agents and employees, until the final determination of the suit or until further order of the court, from in any manner transferring, assigning, distributing or otherwise disposing of or parting with 370,230 shares of the common stock of the Northern Pacific Railway Company alleged in the bill to have been received by the said Northern Securities Company from the complainants Edward H. Harriman and Winslow S. Pierce on or about the 18th day of November, 1901, or any part thereof.

3rd. In deciding that a writ of special injunction should issue in accordance with the prayer of the bill of complaint directed to the said respondent, The Northern Securities Company, restraining said company, its directors, officers, agents and employees until the final determination of the suit or until the further order of this court, from transferring, assigning, distributing or otherwise disposing of or parting with 347,090 shares of the common stock of the Northern Pacific Railway Company received by the said Northern Securities Company from the Northern Pacific Railway Company on or about the 27th day of December, 1901.

4th. In deciding that a special injunction should issue in accordance with the prayer of the bill of complaint directed to the said respondent, The Northern Securities Company, and restraining said

company, its directors, officers, agents and employees until the final determination of the suit or until further order of this court, from transferring, assigning, distributing or otherwise disposing of or parting with the certificates representing said shares of stock of the Northern Pacific Railway Company or any of them or any part thereof.

5th. In not deciding that the motion of the complainants for a preliminary injunction should be dismissed with costs in favor of the respondents.

In order that the foregoing assignment of errors may be
432 and appear of record, the said respondent presents the same to the court and prays that such disposition may be made thereof as is in accordance with law and the statute of the United States in such case made and provided.

All of which is respectfully submitted.

JOHN W. GRIGGS,
JOHN G. JOHNSON,
Per J. W. BAYARD,
Solicitors for said Respondent.

In the United States Circuit Court for the District of New Jersey.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, Oregon Short Line Railroad Co., and The Equitable Trust Co. of New York, Complainants, *against* THE NORTHERN SECURITIES COMPANY and The Northern Pacific Railway Company, Respondents.	On Bill in Equity.

Petition for Appeal.

(Filed September 1, 1904.)

To the honorable the judges of the United States circuit court:

The above named respondent in the above entitled cause, The Northern Securities Company, which is the only respondent which has been served with process or has appeared in this cause, conceiving itself aggrieved by the order made and entered by the above named court in the above entitled cause on the 18th day of August, 1904, wherein and whereby it was and is ordered that a special injunction be issued as prayed in the bill of complaint in this cause directed to the said respondent, The Northern Securities Company, restraining said company, its directors, officers, agents and employees, until the final determination of the suit or until further order of this court, from in any manner transferring, assigning,

distributing or otherwise disposing of or parting with 370,230 shares of the common stock of the Northern Pacific Railway Com-
433 pany alleged in the bill to have been received by the said Northern Securities Company from the complainants, Edward H. Harriman and Winslow S. Pierce on or about the 18th day of November, 1901, or any part thereof, and further restraining the said Northern Securities Company, its directors, officers, agents and employees from transferring, assigning, distributing or otherwise disposing of or parting with 347,090 shares of the common stock of the Northern Pacific Railway Company received by the said Northern Securities Company from the Northern Pacific Railway Company on or about the 27th day of December, 1901, and from transferring, assigning, distributing or otherwise disposing of or parting with the certificates representing said stock or any of them or any part thereof; by which interlocutory order the complainants were awarded a preliminary or special injunction against the said respondent: hereby petitions the said court for an order allowing said respondent to prosecute an appeal from said interlocutory order granting said preliminary or special injunction to the honorable United States circuit court of appeals for the third circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the said respondent shall give and furnish on such appeal: and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal by said United States circuit court of appeals for the third circuit.

And your petitioners will ever pray, etc.

JOHN W. GRIGGS,
JOHN G. JOHNSON,
Per J. W. BAYARD,
Solicitors for The Northern Securities Company,
Respondent.

And now, this first day of September, 1904, this appeal is allowed.

W. M. LANNING, Judge.

434 In the United States Circuit Court for the District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
against
THE NORTHERN SECURITIES COMPANY and THE NORTHERN PACIFIC Railway Company, Respondents.

Bond.

(Filed September 1, 1904.)

Know all men by these presents: That we, the Northern Securities Company, a corporation, as principal, and National Surety Company as surety, are jointly and severally held and firmly bound unto the above named Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and the Equitable Trust Company of New York in the sum of one thousand dollars ($1,000) lawful money of the United States of America to be paid to the said Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and the Equitable Trust Company of New York, their certain attorneys, executors, administrators, successors and assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns severally, firmly, by these presents.

Sealed with our seals dated the 30th day of August in the year of our Lord one thousand nine hundred and four (1904).

The condition of the above obligation is such that whereas the Northern Securities Company has taken an appeal to the circuit court of appeals for the third circuit to reverse an interlocutory order rendered and entered by the circuit court of the United States in and for the district of New Jersey, which order was made and entered in the above entitled cause on the 18th day of August, 1904;

435 *Now, therefore, the condition of the above obligation is such* that if the above named, The Northern Securities Company, respondent herein, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

THE NORTHERN SECURITIES COMPANY,
By JAS. J. HILL, President.

Attest:
[SEAL.] EDWARD T. NICHOLS, Secretary.

NATIONAL SURETY COMPANY,
By ROBERT M. NUGENT, Res. Vice-President.

Attest:
[SEAL.] RICHARD J. MORIARTY, Res. Ass't Sec'y.

The foregoing bond is hereby approved this first day of September, 1904.

W. M. LANNING, Judge.

Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.

STATE OF NEW YORK, County of New York. } ss.:

On this 30th day of August one thousand nine hundred and four, before me personally came Robert M. Nugent, known to me to be the res. vice-president of the National Surety Company, the corporation described in and which executed the within and foregoing bond of Northern Securities Company as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of New York, State of New York; that he is the res. vice-president of said company, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13, 1894; that the seal affixed to the within bond of Northern Securities Company is the corporate seal of said company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as res. vice-president of said company, and that he is acquainted with Richard J. Moriarty and knows him to be the res. ass't secretary of said company; and that the signature of said Richard J. Moriarty subscribed to said bond is in the genuine handwriting of said Richard J. Moriarty, and was thereto subscribed by order and
436 authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unincumbered and liable to execution, exceed its claims, debts, and liabilities, of every nature whatsoever, by more than the sum of one million dollars.

E. A. Armstrong of Camden is our agent to acknowledge service in the judicial district wherein this bond is given.

ROBERT M. NUGENT.

Sworn to, acknowledged before me, and subscribed in my presence this 30th day of August, 1904.

[L. S.]

BELLE L. JAIS,
Notary Public for the County of N. Y.

Certificate filed in Kings, Westchester, Richmond and Queens counties.

Citation.

(Filed September 6, 1904.)

By the Honorable William M. Lanning, judge of the district court of the United States for the district of New Jersey, and *ex-officio* a judge of the circuit court of the United States for said district, in the third circuit.

To Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company, and the Equitable Trust Company of New York:

Whereas, the Northern Securities Company has lately appealed to the United States circuit court of appeals for the third circuit, from an order for preliminary injunction lately rendered in the circuit court of the United States, for the district of New Jersey, made in favor of you, the said Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and the Equitable Trust Company of New York, and has filed the security required by law; you are, therefore, hereby cited to appear before the said United States circuit court of appeals, for the third circuit, to be held at the city of Philadelphia, in the State of Pennsylvania on the thirtieth day of September, instant, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Trenton, in the district of New Jersey, in the third circuit, the first day of September, in the year of our Lord one thousand nine hundred and four.

W. M. LANNING, Judge.

437 Service of a copy of the within citation acknowledged this third day of September, 1904.

LINDABURY, DEPUE & FAULKER,
Solicitors for Complainants and Appellees.

Clerk's Certificate.

UNITED STATES OF AMERICA, District of New Jersey, } ss:

I, S. D. Oliphant, clerk of the circuit court of the United States, for the district of New Jersey, do hereby certify that the foregoing is a full, true and complete transcript of the record in the case of Edward H. Harriman *et al. against* Northern Securities Company *et al.* as the same remains on file and of record in my office.

In testimony whereof I have subscribed my name and affixed the seal of said court at Trenton, in said district, this sixteenth day of September, nineteen hundred and four.

[L. S.] S. D. OLIPHANT, Clerk.

438 Supplemental Transcript of Record.

United States Circuit Court of Appeals for the Third Circuit, October Term, 1904.

NORTHERN SECURITIES COMPANY, Defendant and Appellant,
vs.
EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON Short Line Railroad Company, and The Equitable Trust Company of New York. } No.—.

On Appeal from the Circuit Court of the United States for the District of New Jersey.

Filed October 25, 1904.

438½ Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
versus
NORTHERN SECURITIES COMPANY, Defendant.

Order Granting Leave to File Amended Bill.

(Filed April 26, 1904.)

This matter being opened to the court by Lindabury, Depue & Faulks, solicitors and of counsel with the complainants in the above-entitled cause, who exhibit to the court a verified amended bill of complaint, which the complainants desire to file and no copy of the original bill having been taken out of the office of the clerk of this court, and the defendant not having answered, pleaded or demurred to the original bill; and it appearing from said amended bill of complaint that it is proposed to add as a defendant the Northern Pacific Railway Company, a corporation of the State of Wisconsin, which is not an inhabitant of or found within the district of New Jersey, it is

Ordered that the complainants Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and The Equitable Trust Company of New York be and they are hereby granted leave to file said amended bill of complaint herein, so as among other things to make the Northern Pacific Railway Company a party defendant and that the exhibits filed with the original bill be deemed annexed to said amended bill, and that such amended bill be filed without prejudice to the proceedings already had in this cause, or

to the restraining order granted herein on the 20th day of April 1904, which is continued until the hearing and decision of the motion for a preliminary injunction, and it is further

Ordered that the absent defendant, Northern Pacific Railway Company, be and it is hereby directed to appear, plead, answer, or demur by the first Monday of June, 1904, and that a copy of this order together with a copy of said amended bill be served upon such absent defendant, wherever found, and also upon the defendant Northern Securities Company as the person in possession or
439 charge of the certificates of the common stock of the Northern Pacific Railway Company referred to in the amended bill of complaint.

Trenton, New Jersey, April 26th, 1904.

ADAM KIRKPATRICK, Judge.

United States Circuit Court, District of New Jersey.

EDWARD H. HARRIMAN, ET AL., Complainants,
vs.
NORTHERN SECURITIES COMPANY, Defendant. } On Bill, &c.

Affidavit of George D. Mulligan.

(Filed May 11, 1904.)

DISTRICT OF NEW JERSEY, }
County of Essex, } ss:

George D. Mulligan, of full age, being duly sworn according to law, on his oath says:

I am a member of the bar of the State of New Jersey and am employed in the office of Lindabury, Depue & Faulks, the solicitors of the complainants in the above entitled cause. On the twenty-ninth day of April, nineteen hundred and four, I served a copy of the order made in the said cause on the twenty-sixth day of April, nineteen hundred and four, granting leave to the complainants to file an amended bill of complaint herein, together with a copy of such amended bill of complaint, upon the defendant Northern Securities Company by handing a copy of the said order and of the said amended bill of complaint to J. H. P. Reilly, the secretary of the Hudson Trust Company, the registered agent of the said defendant in the State of New Jersey, and explaining to him the contents thereof.

GEO. D. MULLIGAN.

Sworn and subscribed before me this ninth day of May, A. D. 1904.

J. FRED WHERRY,
Notary Public of New Jersey.

[L. S.]

440 Circuit Court of the United States, District of New Jersey.
In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Complainants,

versus

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Affidavit of William M. Coleman.

(Filed May 25, 1904.)

UNITED STATES OF AMERICA,
Southern District of New York State, State and County of New York.

William M. Coleman, being first duly sworn, deposes and says that he is upwards of eighteen years of age and a clerk in the office of William D. Guthrie, of counsel with the complainants herein:

That on April 27, 1904, at No. 32 Nassau street, and at No. 49 Wall street, both in the borough of Manhattan, city of New York, respectively, he served an order and an amended bill of complaint, of which the annexed are true copies, upon the defendants Northern Securities Company and Northern Pacific Railway Company, respectively, by delivering the same to and leaving the same with William P. Clough, the vice-president of the defendant Northern Securities Company and George H. Earl the secretary and treasurer of the defendant Northern Pacific Railway Company.

Deponent further says that at the time of such service he knew the persons so served to be William P. Clough and George H. Earl, and that they were respectively the vice-president of the above-named defendant Northern Securities Company, and the secretary and treasurer of the above-named defendant Northern Pacific Railway Company, respectively.

WILLIAM M. COLEMAN.

Subscribed and sworn to before me this 29th day of April, 1904

JOHN P. TUOMEY,
[L. S.] Notary Public, Kings Co., N. Y.

Certificate filed in New York county.

441 Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Complainants,

versus

NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Order Granting Leave to File Second Amended Bill.

(Filed June 4, 1904.)

Now, on this 4th day of June, 1904, this cause came on further to be heard on the application of Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and The Equitable Trust Company of New York, the complainants herein, for leave to file their second amended bill and the verified second amended bill of complaint which the complainants desire to file having been exhibited to the court, and no copy of the original bill or of the amended bill having been taken out of the office of the clerk of this court, and the defendants not having answered, pleaded or demurred to the original bill or to the amended bill; on motion of Lindabury, Depue & Faulks, solicitors and of counsel for the complainants, it is

Ordered, that the complainants Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company, and The Equitable Trust Company of New York be and they are hereby granted leave to file said second amended bill of complaint herein in the form so exhibited, and that such second amended bill be filed without prejudice to the proceedings already had in this cause, or to the restraining order granted herein on the 20th day of April, 1904, which is hereby continued until the decision of the motion for a preliminary injunction and the entry of an order thereon. The affidavits already filed by the respective parties on the motion for an injunction are to be considered as if said amendment had not been made.

June 4, 1904.

EDWARD G. BRADFORD, Judge.

442 We hereby waive notice of application for the foregoing order and have no objection to the making thereof, it being understood and agreed that the pending motion for a special injunction shall be determined upon the second amended complaint and the papers and briefs heretofore submitted and upon the supplemental briefs which are to be filed on or before Tuesday, June 14th, 1904, all as though the second amended bill of complaint had been filed preceding the oral argument.

JOHN G. JOHNSON,
Sol'r Northern Sec. Co.

Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Complainants,

versus

NORTHERN SECURITIES COMPANY, Defendant.

Affidavit of Winslow S. Pierce.

(Filed April 20, 1904.)

UNITED STATES OF AMERICA,
State, County, and City of New York, } ss:

Winslow S. Pierce, being duly sworn, deposes and says:

I. I am one of the complainants named in the foregoing bill of complaint and have read the same. The matters and things therein stated, so far as they relate to the acts and deeds of the Oregon Short Line Railroad Company, Edward H. Harriman or myself are true to my own knowledge, and so far as they relate to the acts and deeds of others I believe them to be true.

II. I am, and since long prior to November, 1901, have been a director of the Oregon Short Line Railroad Company, and as such had personal knowledge of the fact that prior to the 18th day of November, 1901, the Oregon Short Line Railroad Company had duly acquired $37,023,000 par value of common capital stock of the Northern Pacific Railway Company and $41,085,000 par
443 value of the preferred stock of said company. The said stock of the Northern Pacific Railway Company was registered in the names of Mr. Edward H. Harriman and myself, and was held by us as trustees for the Oregon Short Line Railroad Company, which company was the beneficial owner thereof.

III. Said Harriman and I were present at the office of the Northern Securities Company on the 18th day of November, 1901, when certificates for said preferred and common stock of the Northern Pacific Railway Company were delivered to the Northern Securities Company. Upon such delivery Mr. Harriman and I received from Mr. James J. Hill, president of said Northern Securities Company certificates for $82,491,871 par value of the stock issued in our names, and we also received a check for $8,915,629 in cash.

IV. I had theretofore been advised by Mr. Harriman that he had agreed that the preferred stock of the Northern Pacific Railway Company should be converted into common stock of the same nominal par value and that such conversion should be by means of the issue of bonds of said railway company which should be convertible into common stock.

V. My information and belief in regard to the allegations of the bill of complaint concerning the legal proceedings instituted by the Attorney-General of the United States in the circuit court of the United States for the district of Minnesota, third division, against the Northern Securities Company, the Northern Pacific Railway Company, and other parties, as in the bill of complaint herein alleged, have been derived from a perusal of a copy of the record of the appeal in said case to the Supreme Court of the United States purporting to have been printed by the clerk of the Supreme Court of the United States and from a copy of the opinion of the circuit court of the United States for the district of Minnesota and of the Supreme Court of the United States as duly published.

My information and belief in regard to the allegations of the bill of complaint as to the issue of stock of the Northern Securities Company and its holdings of stock of the Great Northern and Northern Pacific Railway Companies have been derived from a perusal of a copy of an affidavit sworn to by Mr. James J. Hill, president of the Northern Securities Company on the 11th day of April, 1904, in connection with the proceedings of intervention brought by the Oregon Short Line Railroad Company, Mr. Harriman and myself, as hereinafter stated.

444 I have received by mail from the Northern Securities Company, as a stockholder of record therein, what purports to be a circular issued on behalf of the Northern Securities Company, and being the same as Exhibit E to the bill of complaint. Such circular so mailed to me as aforesaid was accompanied by a form of proxy prepared by the Northern Securities Company, of which a fac similie is hereto annexed as Schedule A to this affidavit.

My information and belief in regard to the allegations of the bill of complaint concerning the action of the Northern Securities Company and its directors in connection with the adoption of certain preambles and resolutions on the 22d of March, 1904, as alleged in the bill of complaint, have been derived from said circular and proxy and also from the statements made to me by Mr. Edward H. Harriman, who is a director of the Northern Securities Company, to the effect that he attended the meeting of the board of directors of said company on said 22d day of March, 1904, and that the preambles and resolutions referred to in the bill of complaint were then adopted by a majority of the directors, and that the circular annexed to the complaint was then directed to be issued, and that at such meeting a communication was submitted from him stating that he had been advised that there were serious legal objections to the plan which was proposed and requested an adjournment of the meeting, but that such adjournment was not granted. Mr. Harriman further informed me that although present at such meeting as a director of the Northern Securities Company he did not vote.

VI. Upon being advised that said Northern Securities Company intended to proceed with its plan for the distribution of the stock of said Great Northern and Northern Pacific Railway Companies *pro*

rata among its stockholders, the Oregon Short Line Railroad Company and Mr. Harriman and myself presented a petition to the circuit court of the United States for the district of Minnesota, third division, asking leave to intervene in said suit *pro interesse suo* in order that the rights of the petitioners might be adjudicated in that suit. Such application was presented to the court on Tuesday and Wednesday, the 12th and 13th of April, 1904, and taken under advisement, and subsequently and on the 19th of April, 1904, said court entered an order denying the petitioners leave to file their petition of intervention, giving their reasons therefor in an opinion, a copy of which, as received by telegraph over the wires of the Western Union Telegraph Company, is hereto annexed as Schedule B to this affidavit.

VII. The reason why an affidavit is not made by Mr. Harri-
445 man personally is that he is at present in the West upon a tour of inspection over the railroads with which he is connected, and that it is impracticable to secure his return in time to make an affidavit or to send one to him.

WINSLOW S. PIERCE.

Subscribed and sworn to before me this 20th day of April, 1904.
[L. S.] JAMES L. MOCK,
Notary Public, Kings County.

Certificate filed in New York county.

SCHEDULE A TO AFFIDAVIT OF W. S. PIERCE.

Know all men by these presents, that the undersigned, —— —— hereby make, constitute and appoint James J. Hill, or in his absence Edward T. Nichols, or in the absence of both —— —— the lawful attorney-in-fact and proxy of the undersigned, for and on behalf of the undersigned, to attend a special meeting of the stockholders of the Northern Securities Company, to be holden at the offices of said company, in Hoboken, in the State of New Jersey, at 11 o'clock a. m., on the 21st day of April, A. D. 1904, and all adjournments of said meeting, and at the said special meeting, and at every adjournment thereof, for and on behalf, and in the name of the undersigned, to cast all votes which the undersigned, if present in person, might cast, on account, or by authority of, any and all shares of the capital stock of the said Northern Securities Company, standing upon the books of the said Northern Securities Company as held or owned by the undersigned; and in particular, to cast any and all votes, which the undersigned might be authorized to cast, if present in person, in favor of the adoption, approval and ratification of an alteration of the certificate of incorporation of the said Northern Securities Company, proposed in certain preambles and resolutions heretofore adopted by the board of directors of the said Northern Securities Company, which preambles and resolutions were as follows, to wit:

Whereas, in the course of its business, this company has acquired, and now holds 1,537,594 shares in the capital stock of the Northern Pacific Railway Company; and 1,181,242 shares in the capital stock of the Great Northern Railway Company; and

446 Whereas, in a suit brought by the United States against this company, the said railway companies, and others, this company has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been enjoined from paying to this company any dividends upon any of the shares of such railway company, held by this company; and

Whereas, this company has issued, and there are now outstanding 3,954000 shares of its own capital stock; and

Whereas, this company desires and intends to comply with the decree in the said suit, fully, and unreservedly, and without delay;

Resolved, In consideration of the premises, it is declared necessary and desirable for this company so to reduce its present capital stock as will enable it, without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railroad companies held by it.

Resolved, That the board of directors of this company hereby declares it advisable that article fourth (4th) of this company's certificate of incorporation be amended, so as to read as follows:

Fourth. The capital stock of this company is hereby reduced to three million nine hundred fifty-four thousand dollars ($3,954,000), and shall hereafter be three million nine hundred and fifty-four thousand dollars ($3,954,000), divided into thirty-nine thousand five hundred forty (39,540) shares of one hundred dollars ($100) each. Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this company's stock surrendering to the company, for retirement, ninety-nine (99) per centum of the shares held by him.

Upon the surrender to this company, by any shareholder, of the entire number of shares, and parts of shares, of this company's stock, which he is hereby required to surrender, this company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents

447 ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof for fractional shares of the stock of this company.

The board of directors or executive committee from time to time shall make such rules and regulations as it shall deem necessary or convenient for carrying out the provisions hereof, and all matters pertaining to the surrender and retirement of the stock of this company, or to the assignment and transfer of the stocks of the said railway companies, hereby contemplated, shall be under the direction of the board. For the purposes hereof, the stockholders of this company, and the number of shares held by them respectively,

shall be determined from the stock transfer books of the company, which, for such determination, shall be closed at a day and hour to be determined by resolution of the board.

"*Resolved*, That a meeting of the stockholders of this company, for the purpose of taking action upon the said alteration of the certificate of incorporation of this company, and also upon such other business as may come before the meeting, be, and is hereby called, to be held at the general office of this company in the city of Hoboken, county of Hudson, and State of New Jersey, at 11 o'clock a. m., on April 1st, A. D. 1904.

And the undersigned does hereby further empower the said attorney-in-fact and proxy, for, and on behalf, and in the name of the undersigned, to give, subscribe and acknowledge the assent of the undersigned to the alteration of the certificate of incorporation of the Northern Securities Company, proposed by the said resolutions, and to do all other acts and execute all other instruments, that may be necessary or desirable, under the laws of the State of New Jersey, to make legal and effective the said proposed alteration; hereby ratifying and confirming all that the said attorney-in-fact and proxy may do in the premises, in conformity with this instrument.

Witness — hand and seal on this — day of ——, A. D. 1904.

—— ——. [SEAL.]

448 SCHEDULE B TO AFFIDAVIT OF W. S. PIERCE.

Circuit Court of the United States for the District of Minnesota, Third Division.

UNITED STATES OF AMERICA
v.
THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont.

Mr. William D. Guthrie, Mr. R. S. Lovett, Mr. Maxwell Evarts and Mr. John D. Baldwin, (Mr. John F. Dillon was with them on the brief for the petitioners.)

Mr. Elihu Root, Mr. John G. Johnson, Mr. Frank B. Kellogg and Mr. C. A. Severance for the Northern Securities Company.

Hon. P. C. Knox, Attorney-General for the United States.

Before Sanborn, Thayer, Van Devanter, and Hook, Circuit Judges.

THAYER, circuit judge, stated the conclusions of the court.

This is an application by Edward H. Harriman and Winslow S. Pierce and the Oregon Short Line Railroad Company for leave to

intervene *pro interesse suo* in the case of The United States *vs.* The Northern Securities Company and others. The case in which they seek to intervene has already passed to a final decree, and the decree has been affirmed recently by the Supreme Court of the United States.

The petitioners recite as the ground of their application that Harriman and Pierce, as trustees for the Oregon Short Line Railroad Company, are the registered owners of $82,491,871 in par value of the stock of the Northern Securities Company which was originally issued to them in exchange for common and preferred stock of the Northern Pacific Railway Company; that since the decree was affirmed by the Supreme Court the directors of the Securities Company have formulated a scheme for the reduction of the capital stock of that company to the extent of ninety-
449 nine per cent., and are about to submit the scheme for approval to the stockholders of the company, that the plan so proposed contemplates that the stockholders of the Securities Company shall surrender ninety-nine per cent. of the stock of that company which they respectively hold, each stockholder receiving in exchange $39.27 in stock of the Northern Pacific Railway Company and $30.17 in preferred stock of the Great Northern Railway Company for each share of the Securities stock so surrendered; that the petitioners Harriman and Pierce are able to return the shares of stock in the Securities Company which they originally received from that company in exchange for Northern Pacific stock; and, as they verily believe, that the proposed plan of distribution if carried out will vest a majority of the stock of the Great Northern and Northern Pacific Railway Companies in the same individuals who co-operated in the forming of the Securities Company and would continue the common management of the two competing railway companies and render the decree of this court ineffectual and defeat its true purpose.

Applications for leave to intervene in a case, after the entry of a final decree, are very unusual.

They are never granted as a matter of course, and owing to the tendency of such applications to occasion delay and prolong the existing litigation, they ought not to be granted unless it is necessary to do so to preserve some right which cannot otherwise be protected or to avoid some complication that is liable to arise.

The principal ground as it seems on which the petitioners Harriman and Pierce base their application to intervene, is that it is necessary to the due enforcement of the decree that they should be admitted into the cause as parties and be allowed to raise further issues and obtain further orders.

It is undoubtedly true that a supplemental bill may be filed in a case after a final decree for the purpose of fully executing it, when, after the decree is entered, some action has been taken or unforeseen events have occurred which will prevent its enforcement unless some further orders or directions are given (Root *v.* Woolworth, 150

U. S., 401, 411; Minnesota Company *v.* St. Paul Company, 2 Wall., 609), but we fail to perceive that further orders are necessary in the case in hand to insure the due execution of the decree according to its terms. The decreee was wholly prohibitory. It enjoined the doing of certain threatened acts, and so long as these acts are not done it enforces itself, and no further action looking to its enforcement is deemed essential. In its bill of complaint the United States prayed, among other things, for a mandatory injunction
450 against the Securities Company requiring it to recall and cancel the certificates of stock which it had issued and to surrender the stock of the two railway companies in exchange for which its stock had been issued. This prayer for relief was denied. The court doubted its power to command stockholders of the Securities Company, who had not been served with process and were not before the court otherwise than by representation (if indeed they were present by representation), to surrender stock which was in their possession and to take other stock in lieu thereof. It accordingly contented itself with an order which rendered the stock of the two railway companies, so long as it was in the hands of the Securities Company, valueless for the purpose of carrying out the objects of the unlawful combination in restraint of interstate trade. The Government was satisfied with the relief which it obtained and expresses itself as fully satisfied therewith at the present time. When the decree was entered it was assumed by the court that when the stock was thus rendered valueless in the hands of the Securities Company the stockholders of that company would be able and likewise disposed to make a disposition of the stock which under all the circumstances of the case would be fair and just and would restore it to the markets of the world where it would have some value instead of being a worthless commodity. It was thought that the duty of thus disposing of it could be safely left to the stockholders of the Securities Company, and that if any controversy arose in the discharge of this function, in view of the situation that had been created by the decree, it would be a controversy that would properly *from* the subject matter of an independent suit between the parties immediately interested. It is true that the decree contained a provision in substance, that nothing therein contained should be construed as prohibiting the Securities Company from returning to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company any and all shares of stock in either of the said railway companies which the Northern Securities Company had acquired in exchange for its own stock, and that nothing therein contained should be construed as prohibiting the Securities Company from making such transfer of the stock aforesaid to such person or persons as had become owners of its own stock originally issued in exchange for stock in the two railway companies. But this provision was merely permissive. It did not command that the stock should be so returned or exclude other methods of disposi-
451 tion of it that in view of all the circumstances, might appear to be more equitable. The fact that the directors of the Se-

curities Company have proposed to its stockholders a plan of distributing the stock of the two railway companies in a manner somewhat different from that which was tentatively suggested by the decree but not commanded, cannot be regarded as a failure to obey the decree. It was said in argument that one purpose of the intervention is to have that clause of the decree which is now merely permissive made mandatory. But this would be to modify the provisions of a decree which has become final by affirmance and make an order which we expressly and on full consideration declined to make when the decree was entered. This we must decline to do.

The application for leave to intervene contains the further suggestion, made on information and belief only, that the proposed plan of disposing of the stock of the Northern Pacific and Great Northern Railway Companies would result in leaving the control of the two railroads in the hands of persons who co-operated in forming the Securities Company and that the petitioners should be permitted to intervene and obtain further orders to prevent such a result. The Securities Company meets this suggestion by the presentation of affidavits and excerpts from its records which tend to show that the proposed plan of distribution will not have the effect last mentioned but will lead to a very wide distribution of the stock, while the scheme which the petitioners have in view, if consummated by an intervention, will have the effect of placing the control of the Northern Pacific Railway Company in the hands of the owner of a parallel and competing road, to wit, the Union Pacific Railway Company. But the issues suggested by these affidavits and excerpts are disputed and debatable questions of fact which the parties would be entitled to litigate with witnesses and evidence after leave to intervene had been granted and we decline to consider them or the affidavits or excerpts which present them upon this motion. We consider and determine this application upon the petition for leave to intervene alone. The United States is the complainant in this case. It is the conservator of the public welfare and has a right to speak for the public. According to well established rules the petitioners cannot intrude into this litigation merely to protect the public interest or as *amici curiæ*, so long as the Government is present by its Attorney General and expresses its disapproval of such intrusion. This would be wresting from the Government that control over the litigation, so far as the public is concerned, which it has a right to exercise. The petitioners can intervene only for
452 the protection of their own individual interests and for that purpose only in the event that they can obtain adequate protection in no other way. The United States, speaking by its Attorney General, says that it "neither admits nor denies the allegations of the petition but objects to the proposed intervention. This case was heard before this court on bill, answer and testimony and a final decree was entered enjoining the defendants as therein recited. Upon appeal by the defendants to the Supreme Court of the United States the decree of this court was affirmed in every particu-

lar, the effect of which was to end and close the case. The United States stands on the decree as affirmed and submits that the court is only concerned to see that it is faithfully observed by the defendants according to its terms." In view of this declaration on the part of the United States it is to be presumed that the Government is disposed to permit the stockholders of the Securities Company to formulate some plan for the equitable disposition of the stock of the two railway companies if they can do so, which will not be in violation of law, feeling confident of its ability to dissolve any future combination in restraint of interstate commerce, should one in fact result from any scheme that may be devised for the disposition of the stock of the two companies and preferring to challenge the validity of any such combination by an independent bill rather than by any future proceedings in this case.

It was further contended in agument that the stock of the Northern Pacific and Great Northern Railway Companies now standing in the name of the Securities Company, was placed *in custodia legis* by the filing of the Government's bill in this case, that it has never been released from such custody, although a final decree has been entered, and that on this ground the petitioners, who assert a right to have particular shares of the Northern Pacific Company returned to them, are entitled to intervene. This argument does not impress us favorably. It may be conceded that so long as property remains actually in judicial custody any one asserting a right thereto or interest therein may intervene, although the case in virtue of which judicial custody was acquired has passed to a final decree. In matters of Howard, 9 Wall. 175., 184, and cases cited, Williams *v.* Morgan, 111 U. S. 684. It is a well-settled doctrine that when a court has acquired the custody of property, persons who assert an interest therein have a right to apply to that court for relief, and as a general rule cannot obtain relief elsewhere. This court, however, has never assumed the custody of the stock of the Northern
453 Pacific and Great Northern Companies, but has studiously refrained from so doing.

It did not assume to direct what should be done with the stock in question when it enjoined the Securities Company from voting it and the railway companies from paying dividends thereon to the Securities Company. Nor was the bill, which was filed by the Government, one that placed the stock in judicial custody when it was filed. It was a proceeding strictly *in personam* which prayed the court to enjoin the use of the stock for the accomplishment of certain unlawful objects and the relief granted was confined to that end. The intervention cannot be allowed on the ground last stated. Our conclusion is that the petitioners should not be allowed to intervene and import into the case new issues to be tried. The due enforcement of the decree does not necessitate such action and if it so happens that the decree of this court in favor of the Government creates a situation which shall give rise to controversies between stockholders of the Securities Company as to how the holdings of

that company in the two railway companies ought to be distributed or what should be done with such holdings, these are questions which can be settled among the stockholders themselves, who are more immediately concerned in these questions, and according to those principles of law and equity which any court having general common law and equity powers, is competent to enforce.

Leave to intervene is denied.

454 Circuit Court of the United States, District of New Jersey.
In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE Railroad Company, and The Equitable Trust Company of New York, Complainants,

versus

NORTHERN SECURITIES COMPANY, Defendant.

Affidavit of Alexander Millar.

(Filed April 20, 1904.)

UNITED STATES OF AMERICA, State, County, and City of New York, } ss:

Alexander Millar, being duly sworn, deposes and says as follows:

I. That he is the secretary of the Union Pacific Railroad Company, and has been secretary of said company since its organization in 1897, and is also and has been for many years secretary of numerous other companies, and that as such secretary he has full charge of the issue and transfer of the capital stocks of said companies, and is and has been for many years familiar with the methods of issuing and transferring stocks.

II. That it is the custom of all corporations having a large issue of capital stock to keep stock books and stock ledgers in which a record is kept of each and every certificate issued by the corporation, and which record shows the name of the person to whom each share of stock has been issued, and likewise the name of the person, or persons, into which any such stock may be transferred, together with a record of each and every certificate surrendered for transfer or in exchange for a new certificate. That it is likewise the custom of all such corporations to keep books of account in which it appears for what purpose stock has been issued, whether for property, and what kind of property, or for cash, and to have a transfer agent or other officer or a transfer agency for the purpose of keeping a true and accurate record of all transfers of stock, and that such transfer agent, officer or agency countersigns each and every certifi-
455 cate issued by the corporation. That such corporation also, in compliance with the general custom and the requirements

of the New York stock exchange, appoints registrars of transfers, for the purpose of having a duplicate record and check of the issue and reissue of all certificates of stock.

III. That the defendant Northern Securities Company, from the time of its incorporation in November, 1901, until the present time, has had a transfer agent who has registered all transfers of stock and who has countersigned all certificates of stock, and that during all this time it has also had a registrar of transfers, namely, the Manhattan Trust Company of New York, which registrar has kept a record of all certificates of stock issued by the said Northern Securities Company, and that the certificates standing in the names of Messrs. Harriman and Pierce, as stated in the bill of complaint in the above entitled suit, were countersigned by said transfer agent and said registrar of transfers and are in the possession of the complainant The Equitable Trust Company of New York.

IV. That he is familiar with the method of bookkeeping prevailing with orporations in the city of New York and elsewhere in the United States and the office books kept by such corporations and their transfer agents and registrars of transfers. That such books of account contain detailed entries in regard to the number, character and identity of each certificate of stock issued by the corporation, and whenever certificates are surrendered for transfer into other names, that such books of account show exactly what certificates have been surrendered and cancelled and what new certificates have been issued in place thereof; and that it is entirely feasible and a common occurrence to trace the origin of a certificate of stock outstanding and to show to whom the first issue of the stock was made and for what consideration, and to whom it has subsequently been transferred, no matter how many transfers may have been made in the meantime.

V. To my knowledge in November, 1901, the capital stock of the Northern Pacific Railway Company consisted of a total authorized issue of $155,000,000, of which $75,000,000 par value consisted of preferred stock and $80,000,000 par value consisted of common stock. Of said common stock at that time issued and outstanding, Messrs. Harriman and Pierce held $37,023,000 par value, and Messrs. Hill and Morgan and their associates held or claimed to hold and control about $42,000,000 par value thereof, making
456 the aggregate of the joint holdings of said Harriman and Pierce and said Hill, Morgan and associates $79,023,000, out of a total outstanding issue of $80,000,000. Of the preferred stock outstanding, $41,085,000 was registered and held in the names of said Harriman and Pierce, and the remainder partly by the said Hill, Morgan and associates and partly by the public.

VI. On or about the 13th day of November, 1901, the board of directors of the Northern Pacific Railway Company resolved to retire the preferred stock through an issue of bonds, which bonds were to be convertible into new common stock of an amount equal to the pre-existing preferred stock, namely, $75,000,000 par value; that

said preferred stock was subsequently so retired, and that the whole amount thereof was thereupon converted into an equal amount of common stock.

ALEXANDER MILLAR.

Subscribed and sworn to before me this 20th day of April, 1904.

[SEAL.] JAMES L. MOCK,
Notary Public, Kings Co., N. Y.

Certificate filed in New York county.

Clerk's Certificate.

UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

I, S. D. Oliphant, clerk of the circuit court of the United States, for the district of New Jersey, do hereby certify that the foregoing are true copies of the original order granting leave to file amended bill, affidavits of George D. Mulligan and William M. Coleman, affidavits of Winslow S. Pierce and Alexander Millar and order granting leave to file second amended bill in the suit of Edward H. Harriman *et al.* against Northern Securities Company *et al.* as the same remains of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this twenty-sixth day of October, nineteen hundred and four.

[L. S.] S. D. OLIPHANT, Clerk.

457 Supplemental Transcript of Record.

United States Circuit Court of Appeals for the Third Circuit, October Term, 1904.

NORTHERN SECURITIES COMPANY, Defendant and Appellant,
vs.
EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON Short Line Railroad Company, and The Equitable Trust Company of New York. } No. —.

On Appeal from the Circuit Court of the United States for the District of New Jersey.

Filed November 10, 1904.

458 Circuit Court of the United States, District of New Jersey. In Equity.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT Line Railroad Company, and The Equitable Trust Company of New York, Complainants,
versus
NORTHERN SECURITIES COMPANY and NORTHERN PACIFIC RAILway Company, Defendants.

Amended Bill.

(Filed April 26, 1904.)

To the honorable the judges of the circuit court of the United States for the district of New Jersey:

Edward H. Harriman and Winslow S. Pierce, residents and citizens of the State of New York; Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah and a resident and citizen of said State, and the Equitable Trust Company of New York, a corporation organized and existing under the laws of the State of New York and a resident and citizen of said State, bring this their amended bill of complaint against the Northern Securities Company, a corporation organized and existing under the laws of the State of New Jersey, and a resident and citizen of said State and an inhabitant of the district of New Jersey, and the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin and a resident and citizen of said State.

And thereupon your orators complain and say:

I. Your orators Edward H. Harriman and Winslow S. Pierce are severally residents and citizens of the State of New York; your orator Oregon Short Line Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Utah as a railroad corporation, and a resident and citizen of said State; and your orator The Equitable Trust Company of New York is a corporation organized and existing under and by virtue of the laws of the State of New York and a resident and citizen of said State.

459 II. The defendant Northern Securities Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and a resident and citizen of said State and an inhabitant of the district of New Jersey. The defendant Northern Pacific Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and a resident and citizen of said State, but is not an inhabitant or found within the district of New Jersey and is without the jurisdiction of this court.

III. The defendant Northern Securities Company was organized on or about the 13th day *day* of November, 1901, by filing in the office of the secretary of state of New Jersey, as required by the statutes of said State in such case made and provided, a certificate of incorporation wherein and whereby it was, among other things, recited that said corporation was organized for the object of acquiring and holding shares of the capital stock of other corporations, that its authorized capital stock should be four hundred million dollars ($400,000,000) divided into four million shares of the par value of one hundred dollars ($100) each, and that its duration should be perpetual, as will more fully and at length appear by said certificate of incorporation so filed in the office of the secretary of state of New Jersey, of which a true copy is annexed as Exhibit A to this amended bill and to which reference is prayed.

IV. Your orators further show that said Harriman and Pierce are now and ever since November 18, 1901, have been the registered owners and holders of $82,491,871 par value of the capital stock of said defendant Northern Securities Company, and that such holding of stock by them is and at all times has been as trustees for the use and benefit of your orator, Oregon Short Line Railroad Company, which company was then and still is the beneficial owner thereof.

V. Your orators further show that heretofore and by indenture dated July 17, 1902, said Oregon Short Line Railroad Company duly pledged $82,491,000 par value of said stock of said defendant Northern Securities Company with your orator, The Equitable Trust Company of New York, as trustee for an issue of bonds of said Oregon Short Line Railroad Company, of which bonds $82,491,000 face value have been certified and issued and are now outstanding, as will more fully and at length appear by said indenture, of which

a copy is annexed as Exhibit B to this amended bill and to which reference is prayed.

VI. Your orators are informed and verily believe and
460 therefore, aver that prior to the 9th day of April, 1903, about $176,822,900 par value of the stock of said Northern Securities Company was issued in exchange for about $153,759,400 par value of the stock of said Northern Pacific Railway Company, and about $211,057,600 par value of the stock of said Northern Securities Company was issued in exchange for about $118,124,200 par value of the stock of the Great Northern Railway Company, a railroad corporation organized and existing under the laws of the State of Minnesota, and about $7,522,000 was issued to the public for cash used for the purchase of other property and for corporate purposes.

VII. Your orators are informed and verily believe and therefore aver that the total authorized capital stock of the Northern Pacific Railway Company in November, 1901, amounted to the par value of $155,000,000, consisting of $75,000,000 par value of preferred stock and $80,000,000 par value of common stock, that such proceedings were had in November and December, 1901, that said preferred stock was converted into common stock so as to make the entire issue of stock of said railway company consist of one class, or common stock, and that such is the authorized amount of its capital stock at the present time, of which all or nea-ly all has been issued and is now outstanding. They are further informed and verily believe and, therefore, aver that the authorized capital stock of the Great Northern Railway Company in the year 1901 was and still is about $125,000,000 par value, of which about $123,000.000 par value has been issued and was then and is now outstanding.

VIII. Your orators further show that said $82,491,871 par value of the stock of said defendant, Northern Securities Company, standing in the names of your orators Harriman and Pierce, trustees as aforesaid, was part of the original issue of the stock of the said Northern Securities Company, and was issued to them and in their name by said Northern Securities Company on or about November 18, 1901, in exchange for $37,023,000 par value of common stock, and $41,085,000 par value of preferred stock of the Northern Pacific Railway Company, and that at the time of such exchange there was also paid to the said Harriman and Pierce by or in behalf of said defendant, Northern Securities Company, the sum of $8,915,629 in cash. The same stock so issued to said Harriman and Pierce on November 18, 1901, is still registered in their names and the certificates therefore are now actually in the custody of your orator, The Equitable Trust Company of New York, as pledgee, as aforesaid, and are
461 available for tender, return or restoration as hereinafter tendered.

IX. Your orators further aver that at the time of such exchange, on said 18th of November, 1901, it was understood and agreed by said Harriman and Pierce and said defendant Northern Securities

Company that the said $41,085,000 par value of said preferred stock of the said Northern Pacific Railway Company should be converted into common stock of said Northern Pacific Railway Company, and as your orators are informed and verily believe and, therefore, aver, said preferred stock was subsequently and in or about the month of December, 1901, converted by said defendant Northern Securities Company into common stock of said Northern Pacific Railway Company of the same par value, and certificates for such common stock were substituted in lieu and place of the certificates for said preferred stock, and the Northern Securities Company now holds within the jurisdiction of this court all and singular the certificates for said common stock so originally received from your orators Harriman and Pierce and the certificates for said common stock into which said preferred stock was so converted.

X. Your orators further aver that after the organization of said Northern Securities Company, and on or about the 10th day of March, 1902, the Attorney-General of the United States, under and by virtue of the provisions of the act of Congress of July 2, 1890, commonly known as the anti-trust act, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies," filed in the circuit court of the United States for the district of Minnesota, third division, a petition or bill of complaint in the name and on behalf of The United States of America against the defendant above named, Northern Securities Company, and against The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel Lamont, as defendants in said suit, in and by which bill of complaint it was, among other things, alleged that the defendants in said suit had entered into an unlawful combination or conspiracy in violation of the provisions of said anti-trust act, and praying that such combination or conspiracy be adjudged and decreed unlawful, and that it be adjudged and decreed that the defendant Northern Securities Company had acquired all and singular the shares of stock of the Northern Pacific and the Great Northern Railway Companies held or acquired by it in
462 pursuance of an unlawful combination or conspiracy; that the Northern Securities Company, its stockholders, officers, directors, agents and servants, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting, or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific or the Great Northern Railway Company; that a mandatory injunction issue requiring the Northern Securities Company to recall and cancel any certificates of stock issued by it in purchase of or in exchange for any of the shares of the capital stock of either of said railway companies, rendering in return therefor to the holders thereof the certificates of stock in the respective railway companies in lieu of which they were issued; that the Northern Pacific Railway Company be perpetually en-

joined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock; that the defendant Great Northern Railway Company be likewise perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock; that the individual defendants above named be perpetually enjoined from in any manner holding, voting or acting as the owner of any of the stock of the Northern Securities Company issued in exchange for stock of either of the said railway companies, unless authorized by said circuit court of the United States, and that a mandatory injunction issue requiring each of the said defendants to surrender any stock of the Northern Securities Company so acquired and held by them and accept therefor the stock of the defendant railway company in exchange for which the same was issued; and that thereafter, such proceedings were had in said suit that the various defendants therein duly answered, and issue was joined by the filing of replications on behalf of the United States to the separate and several answers of said defendants; all as will more fully and at large appear by the record in said suit remaining on file in the office of the clerk of said circuit court of the United States for the district of Minnesota, third division, of which a transcript or copy is annexed as Exhibit C to this amended bill and to which reference is prayed.

XI. Your orators further show that such proceedings were had in said suit in the circuit court of the United States for the district of Minnesota that thereafter on or about the 9th day of April, 1903,
a final decree was entered in favor of the complainant United
463 States of America and against the defendants in said suit, in
and by which decree it was, among other things, adjudged and decreed that said defendants in said suit had entered into a combination or conspiracy in restraint of trade such as the said anti-trust act denounced as illegal, that all of the stock of the Northern Pacific Railway Company and all of the stock of the Great Northern Railway Company then claimed to be held and owned by the defendant Northern Securities Company was acquired and was then held by it in virtue of such unlawful combination or conspiracy, that the Northern Securities Company, its officers, servants, agents and employees, should be and they were enjoined from acquiring or attempting to acquire further stock of either of the aforesaid railway companies, that the Northern Securities Company should be and it was enjoined from voting the aforesaid stock or from voting at any meeting of the stockholders of either of the aforesaid railroad companies or from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railroad companies, or either of them, by virtue of its holding of such stocks therein, that the said railway companies, their officers, directors, servants and agents be and they were enjoined from permitting the stock aforesaid to be

voted by the Northern Securities Company or in its behalf at any corporate election, or from paying any dividends to the Northern Securities Company on account of stock of either of the aforesaid railway companies which it then claimed to own and hold, and that the railway companies be and they were enjoined from permitting or suffering the Northern Securities Company or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies. Said decree further contained a provision that nothing therein contained should be construed as prohibiting the Northern Securities Company from returning or transferring to the stockholders of the Northern Pacific and the Great Northern Railway Companies, respectively, all or any of the shares of stock in either of said railway companies which said Northern Securities Company had theretofore received from said stockholders in exchange for its own stock, and that nothing therein contained should be construed as prohibiting the Northern Securities Company from making transfers and assignments of the stock aforesaid to such person or persons as might then be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway
464 companies; all as will more fully and at length appear by reference to the decree of said circuit court of the United States for the district of Minnesota, third division, dated on said April 9, 1903, of which a copy is annexed as Exhibit D to this amended bill and to which reference is prayed.

XII. Your orators further show that the defendants in said cause thereupon appealed to the Supreme Court of the United States from said decree and that such proceedings were had upon said appeal that thereafter and on or about the 14th day of March, 1904, a decision was entered in said Supreme Court, affirming said decree of said circuit court of the United States for the district of Minnesota, and that thereafter and on or about the 15th day of April, 1904, the mandate of the Supreme Court of the United States was duly issued and on or about the 19th day of April, 1904, was duly filed in the office of the clerk of said circuit court of the United States for the district of Minnesota, which said mandate affirmed said decree of the 9th day of April, 1903.

XIII. Your orators are advised by counsel and, therefore, aver that the effect of said decree of April 9, 1903, as affirmed by the Supreme Court of the United States, was to adjudge that the Northern Securities Company was not a purchaser or owner but simply a custodian of the shares of stock of said railway companies acquired and held by it as aforesaid, that it acquired and held possession thereof in violation of said anti-trust act, that it acquired no title thereto and cannot transfer any rights in respect thereof, and that the legal and equitable owners of said shares of the stock of said railway companies were and are the several parties who originally ex-

changed the same for stock of the Northern Securities Company or their assigns.

XIV. Your orators further show that immediately upon the rendition of such decision by the Supreme Court of the United States the defendant Northern Securities Company, by action of its board of directors, determined to fully and unreservedly abandon and terminate said unlawful combination and to that end to reduce the capital stock of the company by ninety-nine per cent. thereof or to $3,954,000 par value, and to distribute and divide the stock of each of said Great Northern and Northern Pacific Railway Companies held by it *pro rata* among the stockholders of said Northern Securities Company, but not to return and retransfer to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, or their assigns,
465 any of the shares of stock in either of said railway companies which said Northern Securities Company originally received from such stockholders in exchange for its own stock.

Thereupon and in order to consummate said purposes, as your orators are informed and verily believe and, therefore, aver, the board of directors of the Northern Securities Company on or about March 22, 1904, adopted certain preambles and resolutions in the words and figures following

Whereas, in the course of its business, this company has acquired, and now holds 1,537,594 shares in the capital stock of the Northern Pacific Railway Company; and 1,181,242 shares in the capital stock of the Great Northern Railway Company; and

Whereas, in a suit brought by the United States against this company, the said railway companies and others, this company has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been enjoined from paying to this company any dividends upon any of the shares of such railway company, held by this company; and

Whereas, this company has issued, and there are now outstanding 3,954,000 shares of its own capital stock; and

Whereas, this company desires and intends to comply with the decree in the said suit, fully and unreservedly, and without delay;

Resolved, In consideration of the premises, it is declared necessary and desirable for this company so to reduce its present stock as will enable it, without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railroad companies held by it.

Resolved, That the board of directors of this company hereby declares it advisable that article fourth (4th) of this company's certificate of incorporation be amended, so as to read as follows:

Fourth. The capital stock of this company is hereby reduced to three million nine hundred and fifty-four thousand dollars ($3,954,000), and shall hereafter be three million nine hundred and fifty-four thousand dollars ($3,954,000), divided into thirty-nine

thousand five hundred forty (39,540) shares of one hundred
466 dollars ($100) each. Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this company's stock surrendering to the company, for retirement, ninety-nine (99) per centum of the shares held by him.

Upon the surrender to this company, by any shareholder, of the entire number of shares, and parts of shares, of this company's stock, which he is hereby required to surrender, this company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof for fractional shares of the stock of this company.

The board of directors or executive committee from time to time shall make such rules and regulations as it shall deem necessary or convenient for carrying out the provisions hereof, and all matters pertaining to the surrender and retirement of the stock of this company, or to the assignment and transfer of the stocks of the said railway companies, hereby contemplated, shall be under the direction of the board. For purposes hereof, the stockholders of this company, and the number of shares held by them, respectively, shall be determined from the stock transfer books of the company, which, for such determination, shall be closed at a day and hour to be determined by resolution of the board.

Resolved, That a meeting of the stockholders of this company, for the purpose of taking action upon the said alteration of the certificate of incorporation of this company, and also upon such other business as may come before the meeting, be, and is hereby called, to be held at the general officers of this company in the city of Hoboken, county of Hudson, and State of New Jersey, at 11 o'clock a. m., on April 21, A. D. 1904.

Your orators further show that thereupon a circular or notice was directed to be issued and immediately was issued by and on behalf of the defendant, Northern Securities Company, addressed to its stockholders, notifying them of a special meeting of stockholders
for the purpose of voting upon the propositions submitted by
467 the directors as in said preambles and resolutions stated, and that such meeting was held on the 21st day of April, 1904. A copy of the notice or circular so issued by the defendant Northern Securities Company is hereto annexed as Exhibit E of this amended bill and made a part hereof.

Your orators further show that at such meeting of stockholders the stock of said Northern Securities Company was reduced ninety-nine per cent. by the vote of more than seventy per cent. in interest of its stockholders, and that by a like vote said plan of *pro rata* distribution was assented to, but that your orators then and there duly protested that said plan of distribution was illegal and in violation

of the rights of your orators, who did not vote for or assent thereto and have not assented thereto.

XV. As your orators are informed and verily believe and, therefore, aver, the books of account and stock ledgers kept by the defendant Northern Securities Company and the records of its transfer agent and registrar of transfers show for what purpose or consideration each outstanding certificate of stock was originally issued, whether for cash or for stock of said Northern Pacific or said Great Northern Railway Company, and will show that a large part of the stock of the Northern Securities Company, issued originally in exchange for stock of said railway companies, is now held in the name or on behalf of original holders who exchanged the same for stock of said railway companies, and that, wherever there have been transfers of certificates to third parties, the origin of each and every outstanding certificate of stock of the said Northern Securities Company so transferred to third parties can be traced and shown in and by said records and books so that the assigns of the original holders of stock of the defendant Northern Securities Company can be identified and the stock of either railway company originally exchanged by their assignors can be delivered to said assigns in exchange for their present holdings of stock of the defendant Northern Securities Company.

XVI. Your orators further show that the defendant Northern Securities Company threatens and intends, immediately after the holding of said meeting of its stockholders to distribute the shares of stock of each of said Great Northern and Northern Pacific Railway Companies *pro rata* among its stockholders in disregard of the rights of your orators, and that if said defendant Northern Securities Company be not enjoined from so doing by this court, such dis-
468 tribution will be forthwith made, and the stock of the Northern Pacific Railway Company belonging to your orators, and to which they are entitled, will be lost to your orators, and they will thereby suffer injury which cannot be compensated in damages, in that the shares of the Northern Pacific Railway Company to which your orators are so entitled or any like amount of shares could not be purchased in any market or from any persons whomsoever.

XVII. Your orators further show that the proposed distribution *pro rata* in place of the return and restitution of the stock of said railway companies would represent a very large loss of annual income to your orators, amounting to over one million dollars, that is to say, the dividends at the rate now being paid upon the stock of the Northern Pacific Railway Company to which your orators are entitled would exceed by the sum of over one million dollars per annum the dividends upon the stock of the Great Northern and Northern Pacific Railway Companies which they would receive upon such *pro rata* division, and that the value of the Northern Pacific Railway stock to which your orators are entitled exceeds by the sum or value of over ten million dollars the aggregate value of

the *pro rata* share of the holdings of each of the said railway companies which your orators would receive on any such proposed *pro rata* distribution, which latter would be as follows: viz., $32,070,612 par value of Northern Pacific stock and $24,638,919 par value of Great Northern stock instead of $78,108,000 par value of Northern Pacific stock.

XVIII. Your orators further show and aver that they are ready, able and willing, and they hereby offer to return and deliver, or cause to be returned and delivered, and they hereby tender to the said Northern Securities Company all and singular the certificates for the shares of its capital stock so received by them as aforesaid, and said sum of $8,915,629 in cash so paid to them by or on behalf of the said Northern Securities Company, or such further or other sum as the court shall fix, in exchange for and upon the return of the common stock of the Northern Pacific Railway Company, so delivered and exchanged by them as aforesaid, and the common stock of said railway company into which the preferred stock so exchanged was converted as aforesaid, and they hereby offer to bring into court said stock of the defendant Northern Securities Company and said moneys whenever the court shall direct and in all respects to do and perform equity and right in the premises.

469 XIX. Your orators futher show that after the distribution and return of all and singular the shares of stock of said railway companies so acquired and held by the defendant, Northern Securities Company, under and by virtue of said illegal combination, there will remain in the treasury of said defendant property in no way involved in the said suit in the district of Minnesota of a value in excess of the sum of $3,954,000 to which the capital stock of the Northern Securities Company has been reduced, and in addition thereto said company would have the sum of over $8,915,629, so now tendered by the complainants with which to pay and redeem any and all of the $7,522,000 par value of stock of the defendant issued as aforesaid to the public for cash.

In consideration whereof and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law and are only relievable in a court of equity where matters of this kind are cognizable, your orators pray the aid of this honorable court to the end that it be decreed that they are entitled to the return and transfer to them by the defendant Northern Securities Company of the shares of common stock of said Northern Pacific Railway Company which were so delivered by said Harriman and Pierce and the shares of common stock into which the preferred stock of the Northern Pacific Railway Company delivered by them were converted, in exchange for the certificates of stock of the Northern Securities Company so issued to and now held by your orators and said sum in cash; and that the said defendant Northern Securities Company, its directors, officers and agents, may be ordered and directed to endorse the certificates now held by it for said stock of the Northern Pacific Railway Company to your said orator

Oregon Short Line Railroad Company or in blank, and deliver the same to your orator The Equitable Trust Company of New York in exchange for the stock now held by it to be held subject to its rights and lien as trustee aforesaid; and that the defendant Northern Securities Company, its directors, officers, agents and employees be perpetually enjoined and restrained from in any manner parting with, disposing of, transferring, assigning or distributing any part of said stock of the Northern Pacific Railway Company so received from your orators Harriman and Pierce as aforesaid, or any common stock into which the preferred stock received from them may have been converted, or the certificates now representing the same or any part thereof, except to return the same to your orators in ex-
470 change for its own stock so issued as aforesaid and said cash; and that your orators have such other or further or general relief against said Northern Securities Company as shall be proper and just under the circumstances of the case.

Your orators further pray that the defendant Northern Securities Company may be enjoined and restrained from parting with, disposing of, transferring, assigning or distributing said stock of the Northern Pacific Railway Company or any part thereof during the pendency of this suit or any certificates now representing the same.

Your orators further pray that it may please your honors to grant unto your orators a writ of subpœna of the United States of America issued out of and under the seal of this honorable court to be directed to said defendant, Northern Securities Company, therein and thereby commanding it on a day certain to be named, and under a certain penalty, to be and appear before this honorable court, and then and there to answer all and singular the premises, under its corporate seal, but not under oath which is expressly waived, and to stand to, perform and abide by such further order, direction and decree therein as may be made against it in the premises.

And your orators further pray a like writ of subpœna to be directed to the defendant Northern Pacific Railway Company therein and thereby commanding it on a day certain to be named, to appear and answer at its option.

And your orators as in duty bound will ever pray, &c.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel with Complainants.

R. V. LINDABURY,
WILLIAM D. GUTHRIE,
R. S. LOVETT,
BAINBRIDGE COLBY,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, State, County, and City of New York, } ss:

William D. Cornish of full age, being duly sworn, on his oath says: I am vice-president of The Oregon Short Line Railroad Company, one of the complainants in the foregoing amended bill of complaint named. I have read the said amended bill and am
471 familiar with the contents thereof, and the matters and things therein set forth so far as they relate to the acts and deeds of said Oregon Short Line Railroad Company are true, and so far as they relate to the acts and deeds of others, I believe them to be true.

WM. D. CORNISH.

Subscribed and sworn to before me this 26th day of April, 1904.

JAMES L. MOCK,
[SEAL.] Notary Public, Kings County, N. Y.

Certificate filed in New York county.

UNITED STATES OF AMERICA,
Southern District of New York, State, County, and City of New York, } ss:

Alvin W. Krech, of full age, being duly sworn, on his oath says: I am president of The Equitable Trust Company of New York, one of the complainants in the foregoing amended bill of complaint named. I have read the said amended bill and am familiar with the contents thereof, and the matters and things therein set forth so far as they relate to the acts and deeds of said trust company are true, and so far as they relate to the acts and deeds of others, I believe them to be true.

ALVIN W. KRECH.

Subscribed and sworn to before me this 26th day of April, 1904.

JAMES L. MOCK,
[SEAL.] Notary Public, Kings County, N. Y.

Certificate filed in New York county.

472 Clerk's Certificate.

UNITED STATES OF AMERICA,
District of New Jersey, } ss:

I, H. D. Oliphant, clerk of the circuit court of the United States, for the district of New Jersey, do hereby certify that the foregoing is a true copy of the original amended bill, in the suit of

Edward H. Harriman *et al.*, against Northern Securities Company *et al.*, as the same remains of record and on file in my office.

In testimony whereof I have hereunto subscribed my [L. S.] name and affixed the seal of said court this eighth day of November, nineteen hundred and four.

H. D. OLIPHANT, Clerk.

473 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original and supplemental transcripts of record filed in the cause wherein The Northern Securities Company is appellant, and Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and The Equitable Trust Company of New York, are appellees, on file, and now remaining among the records of the said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this eleventh day of January in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty ninth.

[Seal United States Circuit Court of Appeals, Third Circuit.]

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

474 And afterwards to wit on the ninth day of November A. D. 1903 this cause being called for argument on the transcript of record from the circuit court of the United States for the district of New Jersey, before Hon. M. W. Acheson, Hon. George M. Dallas, and Hon. George Gray, circuit judges, and being argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit on the third day of January, A. D. 1905, comes the parties aforesaid by their counsel aforesaid, and the court now being fully advised in the premises renders the following opinion by Dallas, circuit judge, and Gray, circuit judge dissenting.

475 United States Circuit Court of Appeals for the Third Circuit.

NORTHERN SECURITIES COMPANY
v.
EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE RAILROAD COMPANY, and THE EQUITABLE TRUST COMPANY of NEW YORK.

Before Acheson, Dallas, and Gray, Circuit Judges.

DALLAS, Circuit Judge:

This is an appeal by the Northern Securities Company from a decree of the circuit court for the district of New Jersey awarding a preliminary injunction, by which that company was restrained from disposing of 717,320 shares of the common stock of the Northern Pacific Railway Company. It appears from the opinion of the learned judge of the court below that in granting this injunction he was materially influenced by the consideration that the questions involved were, as he viewed them, serious and doubtful, and that a decision by him denying the injunction would, if made, not be reviewable upon appeal. We think that upon this ground he was justified in requiring that the *status quo* should be preserved, and the subject matter of the controversy be withheld from dissipation until the judgment of this court could be obtained. But
476 now the substantial rights of the parties only need be considered, and whether the injunction should stand or be dissolved, ought, in our judgment, to be determined upon the merits, and without further delay. Western Union Telegraph Co. *v.* Pennsylvania R. Co., 123 Fed. Rep. 33–36. There have been cases, it is true, in which it has been held that where the court of first instance has unreservedly exercised its discretion in granting or refusing a preliminary injunction, its action ought not to be interfered with by an appellate court "unless there is some strong reason for it." Massie *v.* Buck, 128 Fed. Rep. 31. But to the circumstances of this case those rulings are inapposite. Attentive reading of the opinion of the learned judge of the circuit court has satisfied us that he regarded the fact that an appeal would not lie from a denial of the injunction as "of controlling importance," and that his decision was made with the understanding that the defendant below would be entitled to invoke a complete adjudication of the entire controversy by this court; and we think that reason and justice demand that such an adjudication shall not be further postponed. The injunction complained of precludes the enjoyment of rights of ownership in property of great value; the facts upon which the propriety of upholding it depends are unquestionably disclosed in the record before us, and the principles by which the legality of the order awarding it must be tested are indubitable, and may be as readily applied now

as at any time hereafter. The only substantial question is
477 as to whether the decree below was accordant with law, and that question this court could not refuse to determine, without in effect renouncing the appellate jurisdiction which Congress has expressly conferred upon it.

In November, 1901, the Northern Securities Company was incorporated under the laws of the State of New Jersey. Its total authorized capital stock was $400,000,000, divided into 4,000,000 shares of the par value of $100 each. The amount of the capital stock with which the corporation could commence business was fixed at $30,000. Its duration was to be perpetual; and its objects were certified to be, *inter alia*, as follows:

"(1.) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey or of any other State, territory or country.

(2.) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3.) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon."

478 The Securities Company was promptly organized in pursuance of its certificate of incorporation, from which the foregoing clauses have been extracted, and very shortly thereafter, the "associate stockholders" of the Great Northern Railway Company transferred to the Securities Company a controlling interest in the capital stock of the Great Northern Railway Company upon an agreed basis of exchange of $180 par value of the capital stock of the Northern Securities Company for each share of the capital stock of the Great Northern Railway Company, and the associate stockholders of the Northern Pacific Railway Company assigned and transferred to the Northern Securities Company a majority of the capital stock of the Northern Pacific Railway Company upon an agreed basis of exchange of $115 par value of the capital stock of the Northern Securities Company for each share of the capital stock of the Northern Pacific Railway Company. For the stock of these railway companies, whether transferred as above stated, or subsequently acquired upon the same basis, and also for about $7,522,000 paid to it in cash, the Securities Company issued its stock certificates in the following form:

"Authorized Capital Stock, $400,000.000.

No. —. — Shares.

Northern Securities Company.

Incorporated and Registered under the Laws of the State of New Jersey.

This certifies that —— —— is the registered holder of —— shares of the capital stock of the Northern Securities Company of one hundred dollars each, transferable only on the books of the com-
479 pany by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate.

This certificate shall not become valid until countersigned by the transfer agent and also by the registrar of transfers.

In testimony whereof, the said company has caused this certificate to be signed by its president and treasurer this — day of ——, A. D. 190–.

—— ——, President.

—— ——, Treasurer.

Countersigned this — day of ——, A. D. 190–.

—— ——,
Transfer Agent.

Countersigned and registered this — day of ——, A. D. 190–.

MANHATTAN TRUST COMPANY,
Registrar of Transfers,

By —— ——, Secretary.

Shares, $100 each."

In March, 1902, a bill was exhibited by the United States, in the circuit court for the district of Minnesota, against the Northern Securities Company, the Northern Pacific Railway Company, the Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel S. Lamont. The object of this bill was to restrain the violation of the act of Congress of July 2, 1890, 26 Stat. c. 647, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" and the suit which it originated was so proceeded with that in April,
480 1903, the said circuit court adjudged and decreed—

"That the defendants above named have heretofore entered into a combination or conspiracy in restraint of trade and commerce among the several States, such as an act of Congress approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' denounces as illegal; that all the stock of the Northern Pacific Railway Company

and all the stock of the Great Northern Railway Company, now claimed to be held and owned by the defendant, The Northern Securities Company, was acquired and is now held by it in virtue of such combination or conspiracy in restraint of trade and commerce among the several States; that the Northern Securities Company, its officers, agents, servants and employees, be, and they are hereby, enjoined from acquiring or attempting to acquire further stock of either of the aforesaid railway companies; that the Northern Securities Company be enjoined from voting the aforesaid stock which it now holds or may acquire, and from voting at any meeting of the stockholders of either of the aforesaid railway companies, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies or either of them by virtue of its holding such stock therein; that the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants, and agents be, and they are hereby, respectively and collectively enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company or in its behalf by its attorneys or agents, at any corporate election for directors or officers of either of the aforesaid railway companies, and that they, together with their officers, directors, servants, and agents, be likewise enjoined and respectively restrained from paying any dividends to the North-
481 ern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold; and that the aforesaid railway companies, their officers, directors, servants and agents, be enjoined from permitting or suffering the Northern Securities Company or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies. * * *"

Upon March 14, 1904, this decree was affirmed by the Supreme Court of the United States (193 U. S. 197), and thereupon, viz., on March 22, 1904, the board of directors of the Securities Company adopted the following preamble and resolutions:

"Whereas, in the course of its business, this company has acquired, and now holds 1,537,594 shares in the capital stock of the Northern Pacific Railway Company; and 1,181,242 shares in the capital stock of the Great Northern Railway Company; and

Whereas, in a suit brought by the United States against this company, the said railway companies and others, this company has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been enjoined from paying to this company any dividends upon any of the shares of such railway company held by this company; and

Whereas, this company has issued, and there are now outstanding 3,954,000 shares of its own capital stock; and

Whereas, This company desires and intends to comply with the decree in the said suit, fully and unreservedly, and without delay;

Resolved, In consideration of the premises, it is declared necessary and desirable for this company so to reduce its present
482 stock as will enable it, without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railroad companies held by it.

Resolved, That the board of directors of this company hereby declares it advisable that article (4th) of this company's certificate of incorporation be amended, so as to read as follows:

Fourth. The capital stock of this company is hereby reduced to three million nine hundred fifty-four thousand dollars ($3,954,000), and shall hereafter be three million nine hundred and fifty-four thousand dollars ($3,954,000), divided into thirty-nine thousand five hundred forty (39,540) shares of one hundred dollars ($100) each. Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this company's stock surrendering to the company, for retirement ninety-nine (99) per centum of the shares held by him.

Upon the surrender to this company, by any shareholder, of the entire number of shares and parts of shares of this company stock, which he is hereby required to surrender, this company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof, for fractional shares of the stock of this company.

The board of directors or executive committee from time to time shall make such rules and regulations as it shall deem necessary or convenient for carrying out the provisions hereof, and all matters pertaining to the surrender and retirement of the stock of this company, or to the assignment and transfer of the stocks of the said railway companies, hereby contemplated, shall be under the direction of the board. For the purposes hereof, the stockholders
483 of this company, and the number of shares held by them, respectively, shall be determined from the stock transfer books of the company, which, for such determination, shall be closed at a day and hour to be determined by resolution of the board.

Resolved, That a meeting of the stockholders of this company, for the purpose of taking action upon the said alteration of the certificate of incorporation of this company, and also upon such other business as may come before the meeting, be, and is hereby called, to be held at the general offices of this company in the city of Hoboken, county of Hudson and State of New Jersey, at 11 o'clock a. m., on April 21, A. D. 1904."

Notice of a meeting of the stockholders of the Securities Company was accordingly given, and such meeting was duly held upon April 21, 1904. At that meeting the stock of the company was reduced

ninety-nine per centum, and the proposed *pro rata* distribution of the stock of the Northern Pacific Railway Company, and of the preferred stock of the Great Northern Railway Company, to and amongst the shareholders of the Securities Company was assented to. This was followed by the institution of the present suit, wherein the complainants allege "that the defendant Northern Securities Company threatens and intends to distribute the shares of stock of each of said Great Northern and Northern Pacific Railway Companies *pro rata* among its stockholders in disregard of the rights of your orators, and that if said defendant Northern Securities Company be not enjoined from so doing by this court, such distribution will be forthwith made, and the stock of the Northern Pacific Railway Company belonging to your orators, and to which they
484 are entitled, will be lost to your orators." The bill accordingly prayed for an injunction, and thereupon, and on affidavits and exhibits, the injunction now in question was awarded.

The appellees averred in their bill, and their counsel have contended in argument, that the shares of railway stock in question were acquired by the Securities Company under and subject to an alleged agreement (which will be presently more particularly referred to) that it would hold them "as custodian, depositary, or trustee;" and that the "legal and equitable owners of said shares of stock of said railway companies were and are the several parties who originally exchanged the same for stock of the Northern Securities Company, or their assigns." On the other hand, the appellant, The Securities Company, insists that it acquired the railway shares referred to by absolute purchase thereof, and that consequently it became and now is vested with the equitable as well as the legal title thereto. The issue thus presented is of primary importance, and the proofs leave us in no doubt as to the facts upon which it must be determined. That the transaction, at least in form, and *prima facie* in substance, was one of purchase and sale is manifest. The resolution which authorized the acquisition of the railway stock on behalf of the Securities Company, was adopted by its board of directors at a meeting at which Mr. Harriman was present as a member of the board, and the only authority it conferred was "to purchase said stock * * * at an aggregate price of $91,407,500, payable as to $82,491,871 thereof in the
485 fully paid up and non-assessable shares of the capital stock of this company at par, and as to $8,915,629 in cash." It is obvious that this resolution contemplated a "purchase," and not a bailment or trust; and that it accurately stated the nature and terms of the contract which was actually made by and with the Securities Company is unequivocally shown by what was done in pursuance of it. The railway shares were unconditionally assigned to that company; the price specified in the resolution was paid by it, and this payment was made partly in cash and partly in shares of its own stock for which corporate certificates in the ordinary form were delivered and accepted. The cash so paid, which amounted to

about $7,522,000, was (as is stated in the bill) "used for the purchase of other property and for corporate purposes;" the complainants received dividends upon the stock that was issued to them, which was paid out of the general funds of the Securities Company; and by its indenture to the Equitable Trust Company of New York, the Oregon Short Line Railroad Company irrefutably asserted its ownership of the Securities Company stock, which it thereby pledged. It is claimed, however, that notwithstanding these facts, the beneficial interest in the railway stock was not transferred to the Securities Company, because, as the appellees allege, the transfer was made under the terms of an agreement which they say was made by James J. Hill, J. Pierpont Morgan, and others, owning or controlling a majority of the capital stock of the Great Northern Railway
486 Company, and a majority of the common stock of the Northern Pacific Railway Company "to organize a holding company * * * and that said holding company should acquire and permanently hold a majority of the shares of the capital stock of said Great Northern and Northern Pacific Companies and control the operations and management thereof in perpetuity, and that the then existing holders of such railway shares should deposit the same with said holding company;" and that "in pursuance of said agreement said Northern Securities Company was organized * * * and forthwith agreed to acquire and hold the shares of said railway stocks, as aforesaid, as custodian, depositary, or trustee, and to issue in exchange therefor its own share certificates upon said agreed basis." The agreement thus set up is not in accord with the documentary evidence which has been referred to, and to establish its existence a clear preponderance of proof should at least be required, whereas, in our opinion, it conclusively appears that no such agreement was ever made. Mr. Harriman himself has distinctly testified that the Northern Pacific stock in question was sold; that the transaction was not an exchange; that he, principally, negotiated the sale, and that there was not attached to the negotiations any condition except as to price. And to the same effect is his affidavit in this case, in which he deposed that he was urged by Messrs. Morgan and Company to dispose of the Northern Pacific stock held by the Oregon Short Line Company, and that "they further stated that upon the organization of the proposed holding company"—not that it would take as custodian or trustee, but that
487 "they would be prepared to purchase the holdings of stock of the Northern Pacific owned by the Oregon Short Line and to pay therefor in the stock of the holding company." These statements of that one of the complainants having most knowledge of the subject, confirmed as they are, by the other evidence, make it quite impossible to believe that the railway stock was received by the Securities Company merely as a custodian or depositary. The only agreement upon which it was transferred was an unqualified agreement of sale, and the fact that the design with which the Securities Company was organized has been compulsorily abandoned

has not divested or in any way affected the absolute title which by executed contract of purchase it acquired. Undoubtedly, it was anticipated by the complainants, as by all concerned, that the rights ordinarily incident to the ownership of stock, including the right to vote and to receive dividends, would be exercisable as to this stock by the Securities Company. But expectation is not contract, and therefore the frustration of this anticipation cannot be said to have occasioned a failure of consideration. The only consideration agreed upon was payment of the price, and, admittedly, that payment was made. The situation, then, is this: The Northern Securities Company is the owner of 1,537,594 shares of the stock of the Northern Pacific Railway Company, and 1,181,242 shares of the stock of the Great Northern Railway Company, which it has been restrained, at the suit of the United States, from voting or receiving dividends upon, and, in view of this restraint, all parties agree
488 that it should not continue to hold them. It accordingly proposes to assign them *pro rata* to its shareholders, including not less than 2,500 persons whose shares were unquestionably acquired by purchase, and who are not parties to this suit; and as such disposition of them would effect a ratable, and therefore equitable, division of them amongst all who are entitled to participate in a distribution of the corporate assets, we are of opinion that the injunction which prohibited it should no longer remain in force.

If the question before us had been involved and decided in the suit of The United States *v.* The Northern Securities Company, or if it had been passed upon, though but incidentally, by the Supreme Court of the United States in disposing of the appeal in that case, we of course would not regard it as an open one. But it was neither decided nor considered at any stage of that litigation. The petition or bill of the United States did pray, *inter alia*, that the stockholders of the railroad companies who had exchanged their stock therein for stock of the Northern Securities Company should be required to surrender any stock of the Northern Securities Company so acquired and held by them, and to accept therefor the railway stock "in exchange for which the same was issued;" but the decree, in so far as it was mandatory, went no further than to prohibit the doing of "the specific things which being done would effect the result denounced by the act." 193 U. S. 356. This was all that was requisite, and it was accomplished by that part of the decree which
489 has been already quoted; and the added clause, though apparently suggested by the prayer of the bill to which we have referred, was obviously not intended to have any obligatory effect. It was permissive merely, and this so plainly appears from its terms that it is necessary only to direct attention to them. They are:

"But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the stockholders of the Northern Pacific Railway Company, and the Great Northern Railway Company respectively, any and all shares of stock in either of said railway companies

which said The Northern Securities Company may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignment of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies."

This decree was affirmed in its entirety and without modification, and thereafter the three principal complainants in the present case applied to the circuit court for the district of Minnesota for leave to intervene in the suit in which it had been made. The ground of that application was substantially the same as that upon which this bill is founded; but, in denying it, the court said:

"The decree was wholly prohibitory. It enjoined the doing of certain threatened acts, and so long as these acts are not done it enforces itself, and no further action looking to its enforcement
490 is deemed essential. In its bill of complaint, the United States prayed, among other things, for a mandatory injunction against the Securities Company requiring it to recall and cancel the certificates of stock which it had issued, and to surrender the stock of the two railway companies in exchange for which its stock had been issued. This prayer for relief was denied. The court doubted its power to command stockholders of the Securities Company, who had not been served with process and were not before the court otherwise than by representation (if indeed they were present by representation) to surrender stock which was in their possession and to take other stock in lieu thereof. It accordingly contented itself with an order which rendered the stock of the two railway companies, so long as it was in the hands of the Securities Company, valueless for the purpose of carrying out the objects of the unlawful combination in restraint of interstate trade. The Government was satisfied with the relief which it obtained and expresses itself as fully satisfied therewith at the present time. * * * It is true that the decree contained a provision, in substance, that nothing therein contained should be construed as prohibiting the Securities Company from returning to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company any and all shares of stock in either of said railway companies which the Northern Securities Company had acquired in exchange for its own stock, and that nothing therein contained should be construed as prohibiting the Securities Company from making such transfer of the stock aforesaid to such person or persons as had become owners of its own stock originally issued in exchange for stock in the two railway companies. But this provision was merely permissive. It did not command that the stock should be returned or exclude other methods of disposing of it that, in view of all the circumstances,
491 might appear to be more equitable. The fact that the directors of the Securities Company have proposed to its stock-

holders a plan of distributing the stock of the two railway companies in a manner somewhat different from that which was tentatively suggested by the decree but not commanded, cannot be regarded as a failure to obey the decree. It was said in argument that one purpose of the intervention is to have that clause of the decree which is now merely permissive made mandatory. But this would be to modify the provisions of a decree which has now become final by affirmance and make an order which we expressly and on full consideration declined to make when the decree was entered. This we must decline to do."

The facts which have been mentioned negative the contention that the question here in dispute was adjudicated in the Government suit, and the further contention that it was at least authoritively dealt with in the principal opinion rendered upon the appeal in that case, is, we think, likewise fallacious. Some phrases in that opinion, if considered separately and without reference to the precise subject which was under investigation, may seem to sanction the interpretation which the appellees have sought to put upon it; but when it is read as a whole, it becomes quite evident that it was not intended to resolve any question other than that which was before the court. The decree that was under review had enjoined the Securities Company from using the railway shares in furtherance of the scheme declared to be unlawful, but, as we have seen, the right of property in those shares was not at all affected by that decree. "The circuit court has done only what the actual situation demanded. Its
492 decree has done nothing more than to meet the requirements of the statute. It could not have done less without declaring its impotency in dealing with those who have violated the law. The decree, if executed, will destroy, not the property interests of the original stockholders of the constituent companies, but the power of the holding corporation as the instrument of an illegal combination of which it was the master spirit, to do that which, if done, would restrain interstate and international commerce. The exercise of that power being restrained, the object of Congress will be accomplished; left undisturbed, the act in question will be valueless for any practical purpose." 193 U. S. 357. We have been asked to infer from this statement in the opinion, that the learned justice who made it intended to affirm that the property interests of the original holders of the railway shares had not been transmuted by their assignment; but no such inference would be warranted. He was not dealing with conflicting claims of title, but with the decree of the circuit court, and the plain and natural meaning of the language he used is, that *by that decree* no property interests had been disturbed. As was stated by the learned judges who made it—

"When the decree was entered it was assumed by the court that when the stock was thus rendered valueless in the hands of the Securities Company the stockholders of that company would be able and likewise disposed to make some disposition of the stock which under all the circumstances of the case would be fair and just and

would restore it to the markets of the world where it would
493 have some value instead of being a worthless commodity. It was thought that the duty of thus disposing of it could be safely left to the stockholders of the Securities Company, and that if any controversy arose in the discharge of this function, in view of the situation that had been created by the decree, it would be a controversy that would properly form the subject matter of an independent suit between the parties immediately interested."

The present suit is an independent one, and as its subject matter is distinctly different from that of the suit in which The United States was complainant, the duty of this court to independently consider- it has seemed to us to be both plain and imperative

The conclusion reached upon the questions we have discussed render- it unnecessary for us to express any opinion upon the other points argued by counsel. From what has been said it follows that the decree of the circuit court must be reversed, and therefore it is so ordered.

GRAY, J., dissenting:

I am constrained to dissent from the judgment of the majority of the court. I do not think the learned judge of the court below exercised other than a sound judicial discretion in granting the motion for a special injunction *pendente lite*. He has stated in his opinion that important and doubtful questions of law and fact had been raised by the pleadings and affidavits, and I cannot agree that these questions should have been so determined by him on a motion for a preliminary injunction, as to make necessary the dismissal of the
bill. I say, to make necessary the dismissal of the bill, because
494 it is apparent that, to have denied the injunction *pendente lite*, and thus to have permitted the distribution of the stocks of the Northern Pacific and Great Northern, in the custody and control of the defendant company, according to the plan proposed, would have practically frustrated the object of the suit, and have rendered unavailing a decree as prayed for, in favor of complainants. Nothing but a clear conviction that complainants' bill was without equity, and should therefore be dismissed without further hearing, would have justified the court below in refusing the preliminary injunction. On the other hand, if the court were satisfied that a *prima facie* case had been presented by complainants, and that the balance of advantage or disadvantage to result to the parties respectively from the granting or withholding an injunction was such as to sanction such action, it was the exercise of a sound judicial discretion to grant the injunction and preserve the *status quo*, until there was opportunity, after full hearing, in the ordinary progress of the suit, to consider, with the deliberation they demanded, the questions of law and fact raised by the pleadings and evidence in the case. The responsibility for the exercise of this power and duty rested upon the court below.

Upon appeal from an order granting a preliminary injunction a reviewing court is not called upon, ordinarily, to enter into and decide the merits of the case, and unless the court below, in granting the preliminary injunction, has violated some rule of equity or abused its discretion, or acted improvidently, this court
495 should not interfere with its discharge of the responsibility and duty imposed upon it. "The right to exercise this discretion has been vested in the trial courts. It has not been granted to the appellate courts, and the question for them to determine is, not how they would have exercised this discretion, but whether or not the courts below have exercised it so carelessly or unreasonably that they have passed beyond the wide latitude permitted them, and violated the rules of law which should have guided their action." That there was no such abuse of discretion in this case by the learned judge of the court below, will, I think, be apparent from his own statement, and from the admission made to that effect by the majority of the court. It seems to me clear that he should be afforded the untrammeled opportunity he sought, for a full hearing and deliberate investigation of what he has stated to be the important and doubtful questions of law and fact presented by this record. Such a course would be consonant with the genius of our judicial system, by not depriving the parties or a reviewing court of the benefit to result from the examination and judgment of a court of first instance. This salutary feature of our system would be measurably lost, if the right to appeal from an interlocutory decree for a special injunction, given by the act of Congress, should be so construed as to allow courts of first instance to refer, and the appellate courts to assume, the determination of questions arising on motions for such injunctions. I cannot accept the view that it is our duty in the case at bar to do more than merely determine whether
496 the sound judicial discretion of the court below has or has not been abused, declining to consider what ought to be the decision on the merits at final hearing. I do not think that the established general rule of appellate courts requires more than this; and I think we can conform to this general rule, "without in effect renouncing the appellate jurisdiction conferred upon us by Congress."

As I am clearly of the opinion that the court below, in granting the special injunction *pendente lite*, has given due consideration and effect to the balance of inconvenience and injury which may result to one person or the other, and that the *prima facie* case was sufficiently established at the hearing to entitle the complainants to the protection of such an injunction, I am in favor of affirming the interlocutory decree.

Filed January 3, 1905.

497 In the United States Circuit Court of Appeals for the Third Circuit, October Term, 1904.

NORTHERN SECURITIES COMPANY, Appellant,
vs.
EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON Short Line Railroad Company, and The Equitable Trust Company of New York. } No. 52.

Appeal from the Circuit Court of the United States for the District of New Jersey.

This cause came on to be heard on the transcript of record from the circuit court of the United States, for the district of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause, be, and the same is hereby reversed with costs.

Philadelphia, January 4, 1905.

(Signed) GEO. M. DALLAS,
Cir. Judge.

498 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages (date of argument, majority opinion of the court and dissenting opinion, and decree) to contain a full, true, complete and faithful copy of the proceedings of this court in the case of The Northern Securities Company, appellant, and Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company and The Equitable Trust Company of New York, appellees, on file, and now remaining among the records of the said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this twenty-fourth day of January in the year of our Lord one thousand nine hundred and five and of the Independence of the United States the one hundred and twenty-ninth.

[Seal United States Circuit Court of Appeals, Third Circuit.]

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

499 Supreme Court of the United States, October Term, 1904.

EDWARD H. HARRIMAN ET AL., Petitioners,
vs.
NORTHERN SECURITIES COMPANY. } No. 512.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

On consideration of the petition for a writ of certiorari herein to the United States circuit court of appeals for the third circuit, and of the argument of counsel thereupon had, as well in support of as against the same, it is now here ordered by the court that said petition be, and the same is hereby, granted.

It is further ordered that the transcript of the record filed as an exhibit to the petition stand as a return to said writ and that the cause be, and the same is hereby, assigned for argument on Monday, February 20th, next, after the cases heretofore assigned for that day.

January 30, 1905.

500 [Endorsed:] File No. 19612. Supreme Court of the United States. Term No. 512. October term, 1904. Order on petition for writ of certiorari. Filed Jan. 30, 1905.

501 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Being informed that there is now pending before you a suit in which Northern Securities Company is appellant, and Edward H. Harriman, Winslow S. Pierce, Oregon Short Line Railroad Company, and The Equitable Trust Company of New York are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of New Jersey, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you
502 that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of January, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

503 [Endorsed:] File No. 19612. Supreme Court of the United States. No. 512, October term, 1904. Edward H. Harriman *et al. vs.* Northern Securities Co. Writ of certiorari.

In the United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

NORTHERN SECURITIES COMPANY

v.

EDWARD H. HARRIMAN, WINSLOW S. PIERCE, OREGON SHORT LINE RAILROAD COMPANY and the EQUITABLE TRUST COMPANY OF NEW YORK.

Before ACHESON, DALLAS and GRAY, Circuit Judges.

DALLAS, Circuit Judge. ACHESON, C. J., concurred with him.

This is an appeal by the Northern Securities Company from a decree of the Circuit Court for the District of New Jersey awarding a preliminary injunction by which that company was restrained from disposing of 717,320 shares of the common stock of the Northern Pacific Railway Company. It appears from the opinion of the learned Judge of the court below that in granting this injunction he was materially influenced by the consideration that the questions involved were, as he viewed them, serious and doubtful, and that a decision by him denying the injunction would, if made, not be reviewable upon appeal. We think that upon this ground he was justified in requiring that the *status quo* should be preserved, and the subject matter of the controversy be withheld from dissipation until the judgment of this court could be obtained. But now the substantial rights of the parties only need be considered, and whether the injunction should stand or be dissolved, ought in our judgment be determined upon the merits, and without further delay. Western Union Telegraph Company v. Pennsylvania

Railroad Company, 123 Fed. 33–36. There have been cases, it is true, in which it has been held that where the court of first instance has unreservedly exercised its discretion in granting or refusing a preliminary injunction, its action ought not to be interfered with by an appellate court "unless there is some strong reason for it." Massie v. Buck, 128 Fed. 31. But to the circumstances of this case those rulings are inapposite. Attentive reading of the opinion of the learned judge of the Circuit Court has satisfied us that he regarded the fact that an appeal would not lie from a denial of the injunction as "of controlling importance," and that his decision was made with the understanding that the defendant below would be entitled to invoke a complete adjudication of the entire controversy by this court; and we think that reason and justice demand that such an adjudication shall not be further postponed. The injunction complained of precludes the enjoyment of rights of ownership in property of great value; the facts upon which the propriety of upholding it depends are unquestionably disclosed in the record before us, and the principles by which the legality of the order awarding it must be tested are indubitable, and may be as readily applied now as at any time hereafter. The only substantial question is as to whether the decree below was accordant with law, and that question this court could not refuse to determine, without in effect renouncing the appellate jurisdiction which Congress has expressly conferred upon it.

In November, 1901, the Northern Securities Company was incorporated under the laws of the State of New Jersey. Its total authorized capital stock was $400,000,000, divided into 4,000,000 shares of the par value of $100 each. The amount of the capital stock with which the corporation could commence business was fixed at $30,000. Its duration was to be perpetual; and its objects were certified to be, *inter alia*, as follows:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other

corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon."

The Securities Company was promptly organized in pursuance of its certificate of incorporation, from which the foregoing clauses have been extracted, and very shortly thereafter, the "associate stockholders" of the Great Northern Railway Company transferred to the Securities Company a controlling interest in the capital stock of the Great Northern Railway Company upon an agreed basis of exchange of $180 par value of the capital stock of the Northern Securities Company for each share of the capital stock of the Great Northern Railway Company, and the associate stockholders of the Northern Pacific Railway Company assigned and transferred to the Northern Securities Company a majority of the capital stock of the Northern Pacific Railway Company upon an agreed basis of exchange of $115 par value of the capital stock of the Northern Securities Company for each share of the capital stock of the Northern Pacific Railway Company. For the stock of these railway companies, whether transferred as above stated, or subsequently acquired upon the same basis, and also for about $7,522,000 paid to it in cash, the Securities Company issued its stock certificates in the following form:

"AUTHORIZED CAPITAL STOCK, $400,000,000.

No. -------- -------- Shares

NORTHERN SECURITIES COMPANY.

Incorporated and Registered Under the Laws of the State of New Jersey.

This Certifies that ---------- is the registered holder of ---------- shares of the Capital stock of the

Northern Securities Company of One hundred dollars each. transferable only on the books of the company by the holder hereof, in person of by duly authorized attorney, upon the surrender of this certificate.

In testimony whereof, the said company has caused this certificate to be signed by its President and Treasurer this -------- day of ---------- A. D. 190--

---------- --------
President.

Treasurer.

Countersigned this -------- day of ---------- A. D. 190--

Transfer Agent.

Countersigned and Registered this -------- day of ---------- A. D. 190--

MANHATTAN TRUST COMPANY
Register of Transfers.
By ----------
Secretary.

Shares, $100 each."

In March, 1902, a bill was exhibited by the United States, in the Circuit Court for the District of Minnesota, against the Northern Securities Company, the Northern Pacific Railway Company, the Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel Lamont. The object of this bill was to restrain the violation of the Act of Congress of July 2, 1890, 26 Stat., c. 647, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; and the suit which it originated was so proceeded with that in April, 1903, the said Circuit Court adjudged and decreed

"That the defendants above named have heretofore entered into a combination or conspiracy in restraint of trade and commerce among the several States, such as an Act of Congress approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' denounces as illegal; that all the stock of the Northern Pacific Railway Company and all the stock of the Great Northern Railway Company, now claimed to be held and owned by the defendant, the Northern Securities Company, was acquired and is now held by it in virtue of such combination or conspiracy in restraint of trade and commerce among the several

States ; that the Northern Securities Company, its officers, agents, servants and employees, be, and they are hereby, enjoined from acquiring or attempting to acquire further stock of either of the aforesaid railway companies ; that the Northern Securities Company be enjoined from voting the aforesaid stock which it now holds or may acquire, and from voting at any meeting of the stockholders of either of the aforesaid railway companies, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies or either of them by virtue of its holding such stock therein ; that the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants, and agents be, and they are hereby, respectively and collectively enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company or in its behalf by its attorneys or agents, at any corporate election for directors or officers of either of the aforesaid railway companies, and that they, together with their officers, directors, servants, and agents, be likewise enjoined and respectively restrained from paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold ; and that the aforesaid railway companies, their officers directors, servants, and agents, be enjoined from permitting or suffering the Northern Securities Company or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies * * * ."

Upon March 14, 1904, this decree was affirmed by the Supreme Court of the United States (193 U. S., 197), and thereupon, viz., on March 22, 1904, the Board of Directors of the Securities Company adopted the following preample and resolutions.

" WHEREAS, In the course of its business, this Company has acquired, and now holds 1,537,594 shares in the capital stock of the Northern Pacific Railway Company ; and 1,181,242 shares in the capital stock of the Great Northern Railway Company ; and

WHEREAS, in a suit brought by the United States against this Company, the said railway companies and others, this Company has been enjoined from voting upon the shares of either of the said railway companies, and each of the said railway companies has been enjoined from paying to this Company any dividends upon any of the shares of such railway company, held by this company ; and

WHEREAS, This Company has issued, and there are now outstanding 3,954,000 shares of its capital stock ; and

WHEREAS, This Company desires and intends to comply with the decree in said suit, fully and unreservedly, and without delay;

Resolved, in consideration of the premises, it is declared necessary and desirable for this Company so to reduce its present stock as will enable it, without delay, in connection with such reduction, to distribute among its shareholders, the shares of capital stock of said railway companies held by it.

Resolved, That the Board of Directors of this Company hereby declares it advisable that Article (4th) of this Company's Certificate of Incorporation be amended, so as to read as follows:

FOURTH. The capital stock of this Company is hereby reduced to three million nine hundred fifty-four thousand dollars ($3,954,000), and shall hereafter be three million nine hundred and fifty-four thousand dollars ($3,954,000), divided into thirty-nine thousand five hundred forty (39,540) shares of one hundred dollars ($100) each. Such reduction of capital stock shall be accomplished by each holder of outstanding shares of this Company's stock surrendering to the Company, for retirement, ninety-nine (99) per centum of the shares held by him.

Upon the surrender to this Company, by any shareholder, of the entire number of shares, and parts of shares of this Company's stock, which he is hereby required to surrender, this Company will assign to him, for each share so surrendered, thirty-nine dollars and twenty-seven cents ($39.27) of the stock of the Northern Pacific Railway Company, and thirty dollars and seventeen cents ($30.17) of the preferred stock of the Great Northern Railway Company, and proportional amounts thereof for fractional shares of the stock of this Company.

The Board of Directors or Executive Committee from time to time shall make such rules and regulations as it shall deem necessary or convenient for carrying out the provisions hereof, and all matters pertaining to the surrender and retirement of the stock of this Company, or to the assignment and transfer of the stock of the said railway companies, hereby contemplated, shall be under the direction of the Board. For the purposes hereof, the stockholders of this Company, and the number of shares held by them, respectively, shall be determined from the stock transfer books of the Company, which, for such determination shall be closed at a day and hour to be determined by resolution of the Board.

Resolved, That a meeting of the stockholders of this Company, for the purpose of taking action upon the said alterations of the Certificate of Incorporation of this Company, and also upon such other business as may come before the meeting, be, and is hereby called, to be held at the general offices of this Company in the City of Hoboken, County of Hudson, and

State of New Jersey, at 11 o'clock A. M., on April 21, A. D. 1904."

Notice of a meeting of the stockholders of the Securities Company was accordingly given, and such meeting was duly held upon April 21, 1904. At that meeting the stock of the Company was reduced ninety-nine per centum, and the proposed *pro rata* distribution of the stock of the Northern Pacific Railway Company, and of the preferred stock of the Great Northern Railway Company, to and amongst the shareholders of the Securities Company was assented to. This was followed by the institution of the present suit, wherein the complainants alleged " that the defendant Northern Securities Company threatens and intends to distribute the shares of stock of each of said Great Northern and Northern Pacific Railway Companies *pro rata* amongst its stockholders in disregard of the rights of your orators, and that if said defendant Northern Securities Company be not enjoined from so doing by this court, such distribution will be forthwith made, and the stock of the Northern Pacific Railway Company belonging to your orators, and to which they are entitled will be lost to your orators * * * ". The bill accordingly prayed for an injunction, and thereupon, and on affidavits and exhibits, the injunction now in question was awarded.

The appellees averred in their bill, and their counsel have contended in argument, that the shares of railway stock in question were acquired by the Securities Company under and subject to an alleged agreement (which will be presently more particularly referred to) that it would hold them " as custodian, depositary, or trustee " ; and that the " legal and equitable owners of said shares of stock of said railway companies were and are the several parties who originally exchanged the same for stock of the Northern Securities Company, or their assigns." On the other hand, the appellant, the Securities Company insists that it acquired the railway shares referred to by absolute purchase thereof, and that consequently it became and now is vested with the equitable as well as the legal title thereto. The issue thus presented is of primary importance, and the proofs leave us in no doubt as to the facts upon which it must be determined. That the transaction, at least in form, and *prima facie* in substance, was one of purchase and

sale is manifest. The resolution which authorized the acquisition of the railway stock on behalf of the Securities Company, was adopted by its Board of Directors at a meeting at which Mr. Harriman was present as a member of the Board, and the only authority it conferred was "to purchase said stock * * * at an aggregate price of $91,497,500, payable as to $32,491,871 thereof in the fully paid-up and non-assessible shares of the capital stock of this company at par, and as to $8,915,629 in cash". It is obvious that this resolution contemplated a "purchase", and not a bailment or trust; and that it accurately stated the nature and terms of the contract which was actually made by and with the Securities Company unequivocally shown by what was done in pursuance of it. The railway shares were unconditionally assigned to that company; the price specified in the resolution was paid by it, and this payment was made partly in cash and partly in shares of its own stock for which corporate certificates in the ordinary form were delivered and accepted. The cash so paid, which amounted to about $7,522,000, was (as is stated in the bill) "Used for the purchase of other property and for corporate purposes"; the complainants received dividends upon the stock that was issued to them, which were paid out of the general funds of the Securities Company; and by its indenture to the Equitable Trust Company of New York, the Oregon Short Line Railroad Company irrefutably asserted its ownership of the Securities Company stock, which it thereby pledged. It is claimed, however, that notwithstanding these facts, the beneficial interest in the railway stock was not transferred to the Securities Company, because, as the appellees allege, the transfer was made under the terms of an agreement which they say was made by James J. Hill, J. Pierpont Morgan, and others, owning or controlling a majority of the capital stock of the Great Northern Railway Company, and a majority of the common stock of the Northern Pacific Railway Company, "to organize a holding company, * * * and that said holding company should acquire and permanently hold a majority of the shares of the capital stock of said Great Northern and Northern Pacific Companies and control the operations and management thereof in perpetuity, and that the then existing holders of such railway shares should deposit the same with said holding company"; and that "in pursuance of said agree-

ment said Northern Securities Company was organized * * *, and forthwith agreed to acquire and hold the shares of said railway stocks, as aforesaid, as custodian, depositary, or trustee, and to issue in exchange therefor its own share certificates upon said agreed basis." The agreement thus set up is not in accord with the documentary evidence which has been referred to, and to establish its existence a clear preponderance of proof should at least be required, whereas, in our opinion, it conclusively appears that no such agreement was ever made. Mr. Harriman himself has distinctly testified that the Northern Pacific stock in question was sold; that the transaction was not an exchange; that he, principally, negotiated the sale, and that there was not attached to the negotiations any condition except as to price. And to the same effect is his affidavit in this case, in which he deposed that he was urged by Messrs Morgan and Company to dispose of the Northern Pacific stock held by the Oregon Short Line Company, and that "they further stated that upon the organization of the proposed holding company"—not that it would take as custodian or trustee, but that "they would be prepared to purchase the holdings of stock of the Northern Pacific owned by the Oregon Short Line and pay therefor in the stock of the holding company." These statements of that one of the complainants having most knowledge of the subject, confirmed, as they are, by the other evidence, make it quite impossible to believe that the railway stock was received by the Securities Company merely as a custodian or depositary. The only agreement upon which it was transferred was an unqualified agreement of sale, and the fact that the design with which the Securities Company was organized has been compulsorily abandoned has not divested or in any way affected the absolute title which by executed contracts of purchase it acquired. Undoubtedly, it was anticipated by the complainants, as by all concerned, that the rights ordinarily incident to the ownership of stock, including the right to vote and to receive dividends, would be exercisable as to this stock by the Securities Company. But expectation is not contract, and therefore the frustration of this anticipation cannot be said to have occasioned a failure of consideration. The only consideration agreed upon was payment of the price, and, admittedly, that payment was

made. The situation, then, is this: The Northern Securities Company is the owner of 1,537,594 shares of the stock of the Northern Pacific Railway Company, and, 1,181,242 shares of the stock of the Great Northern Railway Company, which it has been restrained, at the suit of the United States, from voting or receiving dividends upon, and, in view of this restraint, all parties agree that it should not continue to hold them. It accordingly proposes to assign them *pro rata* to its shareholders, including not less than 2500 persons whose shares were unquestionably acquired by purchase, and who are not parties to this suit; and as such disposition of them would effect a ratable, and therefore equitable, division of them amongst all who are entitled to participate in a distribution of the corporate assets, we are of opinion that the injunction which prohibited it should no longer remain in force.

If the question before us had been involved and decided in the suit of the United States v. The Northern Securities Company, or if it had been passed upon, though but incidently, by the Supreme Court of the United States in disposing of the appeal in that case, we of course would not regard it as an open one. But it was neither decided nor considered at any stage of that litigation. The petition or bill of the United States did pray, *inter alia*, that the stockholders of the railroad companies who had exchanged their stock therein for stock of the Northern Securities Company should be required to surrender any stock of the Northern Securities Company so acquired and held by them, and to accept therefor the railway stock "in exchange for which the same was issued"; but the decree, in so far as it was mandatory, went no further than to prohibit the doing of "the specific things which being done would effect the result denounced by the act"—193 U. S. 356. This was all that was requisite, and it was accomplished by that part of the decree which has been already quoted; and the added clause, though apparently suggested by the prayer of the bill to which we have referred, was obviously not intended to have any obligatory effect. It was permissive merely, and this so plainly appears from its terms that it is necessary only to direct attention to them. They are: "But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the stockholders of the Northern Pacific Railway Company

and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said the Northern Securities Company may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignment of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies." This decree was affirmed in its entirety and without modification, and thereafter the three principal complainants in the present case applied to the Circuit Court for the District of Minnesota for leave to intervene in the suit in which it had been made. The ground of that application was substantially the same as that upon which this bill is founded; but, in denying it, the court said: "The decree was wholly prohibitory. It enjoined the doing of certain threatened acts, and so long as those acts are not done it enforces itself, and no further action looking to its enforcement is deemed essential. In its bill of complaint, the United States prayed, among other things, for a mandatory injunction against the Securities Company requiring it to recall and cancel the certificates of stock which it had issued and to surrender the stock of the two Railway Companies in exchange for which its stock had been issued. This prayer for relief was denied. The Court doubted its power to command stockholders of the Securities Company, who had not been served with process and were not before the Court otherwise than by representation (if indeed they were present by representation), to surrender stock which was in their possession and to take other stock in lieu thereof. It accordingly contented itself with an order which rendered the stock of the two Railway Companies, so long as it was in the hands of the Securities Company valueless for the purpose of carrying out the objects of the unlawful combination in restraint of interstate trade. The Government was satisfied with the relief which it obtained and expresses itself as fully satisfied therewith at the present time, It is true that the decree contained a provision in substance, that nothing therein contained should be construed as prohibiting the Securities Company from returning to the stock-

holders of the Northern Pacific Railway Company and the Great Northern Railway Company any and all shares of stock in either of said Railway Companies which the Northern Securities Company had acquired in exchange for its own stock and that nothing therein contained should be construed as prohibiting the Securities Company from making such transfer of the stock aforesaid to such person or persons as had become the owners of its own stock originally issued in exchange for stock in the two Railway Companies. But this provision was merely permissive. It did not command that the stock should be returned or exclude other methods of disposing of it that in view of all the circumstances, might appear to be more equitable. The fact that the directors of the Securities Company have proposed to its stockholders a plan of distributing the stock of the two Railway Companies in a manner somewhat different from that which was tentatively suggested by the decree but not commanded, cannot be regarded as a failure to obey the decree. It was said in argument that one purpose of the intervention is to have that clause of the decree which is now merely permissive made mandatory. But this would be to modify the provisions of a decree which has now become final by affirmance and made an order which we expressly and on full consideration declined to make when the decree was entered. This we must decline to do." The facts which have been mentioned negative the contention that the question here in dispute was adjudicated in the goverment suit, and the further contention that it was at least authoritatively dealt with in the principal opinion rendered upon the appeal in that case, is, we think, likewise fallacious. Some phrases in that opinion, if considered separately and without reference to the precise subject which was under investigation, may seem to sanction the interpretation which the appellees have sought to put upon it ; but when it is read as a whole, it becomes quite evident that it was not intended to resolve any question other than that which was before the court. The decree that was under review had enjoined the Securities Company from using the railway shares in furtherance of the scheme declared to be unlawful, but, as we have seen, the right of property in those shares was not at all affected by that decree.

"The Circuit Court has done only what the actual situation demanded. Its decree has done nothing more than to meet the requirements of the statute. It could not have done less without declaring its impotency in dealing with those who have violated the law. The decree, if executed, will destroy, not the property interests of the original stockholders of the constituent companies, but the power of the holding corporation as the instrument of an illegal combination of which it was the master spirit, to do that which, if done, would restrain inter-state and international commerce. The exercise of that power being restrained, the object of Congress will be accomplished; left undisturbed, the act in question will be valueless for any practical purpose." 193 U. S., 357.

We have been asked to infer from this statement in the opinion, that the learned justice who made it intended to affirm that the property interests of the original holders of the railway shares had not been transmuted by their assignment; but no such inference would be warranted. He was not dealing with conflicting claims of title, but with the decree of the Circuit Court, and the plain and natural meaning of the language he used is, that by that decree no property interests had been disturbed. As was said by the learned judges who made it, "When the decree was entered it was assumed by the Court that when the stock was thus rendered valueless in the hands of the Securities Company the stockholders of that Company would be able and likewise disposed to make some disposition of the stock which under all the circumstances of the case would be fair and just and would restore it to the markets of the world where it would have some value instead of being a worthless commodity. It was thought that the duty of thus disposing of it could be safely left to the stockholders of the Securities Company, and that if any controversy arose in the discharge of this function, in view of the situation that had been created by the decree, it would be a controversy that would properly form the subject matter of an independent suit between the parties immediately interested." The present suit is an independent one, and as its subject matter is distinctly different from that of the suit in which the United States was complainant, the duty of this court to independently consider it has seemed to us to be both plain and imperative.

The conclusions reached upon the questions we have dis-

cussed render it unnecessary for us to express any opinion upon the other points argued by counsel. From what has been said it follows that the decree of the Circuit Court must be reversed, and therefore it is

So ordered.

GRAY, J., dissenting.

I am constrained to dissent from the judgment of the majority of the court. I do not think the learned judge of the court below exercised other than a sound judicial discretion in granting the motion for a special injunction, *pendente lite*. He has stated in his opinion that important and doubtful questions of law and fact had been raised by the pleadings and affidavits, and I cannot agree that these questions should have been so determined by him on a motion for a preliminary injunction, as to make necessary the dismissal of the bill. I say, to make necessary the dismissal of the bill, because it is apparent that, to have denied the injunction *pendente lite*, and thus to have permitted the distribution of the stocks of the Northern Pacific and Great Northern, in the custody and control of the defendant company, according to the plan proposed, would have practically frustrated the object of the suit, and have rendered unavailing a decree, as prayed for, in favor of complainants. Nothing but a clear conviction that complainant's bill was without equity, and should therefore be dismissed without further hearing, would have justified the court below in refusing the preliminary injunction. On the other hand, if the court were satisfied that a *prima facie* case had been presented by complainants, and that the balance of advantage or disadvantage to result to the parties respectively from the granting or withholding an injunction was such as to sanction such action, it was the exercise of a sound judicial discretion to grant the injunction and preserve the *status quo* until there was opportunity, after full hearing, in the ordinary progress of the suit, to consider, with the deliberation they demanded, the questions of law and fact raised by the pleadings and evidence in the case. The responsibility for the exercise of this power and duty rested upon the court below.

Upon appeal from an order granting a preliminary injunction,

a reviewing court is not called upon, ordinarily, to enter into and decide the merits of the case, and unless the court below, in granting the preliminary injunction, has violated some rule of equity or abused its discretion, or acted improvidently, this court should not interfere with its discharge of the responsibility and duty imposed upon it. "The right to exercise this discretion has been vested in the trial courts. It has not been granted to the appellate courts, and the question for them to determine is, not how they would have exercised this discretion, but whether or not the courts below have exercised it so carelessly or unreasonably that they have passed beyond the wide latitude permitted them, and violated the rules of law which should have guided their action." That there was no such abuse of discretion in this case by the learned judge of the court below, will, I think, be apparent from his own statement, and from the admission made to that effect by the majority of the court. It seems to me clear that he should be afforded the untrameled opportunity he sought, for a full hearing and deliberate investigation of what he has stated to be the important and doubtful questions of law and fact presented by this record. Such a course would be consonant with the genius of our judicial system, by not depriving the parties, or a reviewing court, of the benefit to result from the examination and judgment of a court of first instance. This salutary feature, of our system would be measurably lost, if the right to appeal from an interlocutory decree for a special injunction, given by the Act of Congress, should be so construed as to allow courts of first instance to refer, and the appellate courts to assume, the determination of the questions arising on motions for such injunctions. I cannot accept the view that it is our duty in the case at bar to do more than merely determine whether the sound judicial discretion of the court below has or has not been abused, declining to consider what ought to be the decision on the merits at final hearing. I do not think that the established general rule of appellate courts requires more than this; and I think we can conform to this general rule, "without in effect renouncing the appellate jurisdiction conferred upon us by Congress."

As I am clearly of the opinion that the court below, in granting the special injunction, *pendente lite*, has given due consideration and effect to the balance of inconvenience and injury which may result to one person or the other, and that the *prima facie* case was sufficiently established at the hearing to entitle the complainants to the protection of such an injunction, I am in favor of affirming the interlocutory decree.

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